



राजस्त्री
राजपत्र

भारत का राजपत्र

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No. 3]

NEW DELHI, SATURDAY, JANUARY 20, 1990/PAUSA 30, 1911

इस भाग में भिन्न संघर्ष वाली जाती है जिससे कि यह अस्थ तंत्रज्ञान के स्पष्ट में
रक्त खाली लाले

Separate Pagine given to this Part in order that it may be filled as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-Section (ii)

(रक्त अंत्रालय को छोड़ कर) 5 सरकार के अंत्रालयों द्वारा जारी किए गए तांत्रिक आदेश और अधिसूचनाएँ
Statutory Orders and Notifications issued by the Ministries of the Government of India (other than
the Ministry of Defence)

कानूनीकृत, लोक विकास तथा अंत्रालय
(कानूनी प्रोग्राम प्रशिक्षण विभाग)

प्रादेश

नई दिल्ली, 27 दिसम्बर,

का.आ. 144.—केन्द्रीय सरकार, विनियोग पुलिस स्थापन
अधिनियम, 1946 (1946 का 25) का 6 के तात्पर्य पहिले
शारण 5 के उपचारा (1) द्वारा प्रहसन तक प्रयोग करने द्वारा
आनंद प्रदेश राजा सरकार की वहस्ति से इसे में संबंध उपावन्धों
में विधा उन्नितित अपनाधीनों के प्रबोधण के दिल्ली विशेष पुलिस

स्थापन के मद्दतीयों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण
प्रान्त विशेष राज्य पर करती है।

(क) उपावन्ध-I-14 मामले (हैवरायाद शास्त्रा) उपावन्ध-II-18
मामले) (विशेषापटनम शास्त्रा)

(ख) ऊपर उन्निति अपराधों और उन्हीं तथ्यों से उत्पन्न होने
वाले वैसे ही स्वेच्छावाद के अनुक्रम में किए गए किसी अन्य
शास्त्राधीय वा अन्याधीय के संबंध में या उनसे संबंधित प्रयत्न,
दुष्प्रेरण और उद्यन्त्र।

[संख्या 228/14/89-ए.वी.डी. (II)]

उपायमंड़ I

भार. सी. सं. और एजिस्ट्रीकरण की तारीख और विधि की घारां

संक्षिप्त प्रसिद्धिका नाम

(1)

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1. भ्रष्टाचार निवारण प्रधिनियम, 1947 की घारा 5(1)(इ) के साथ पठित घारा 5(2) घारा 5(1)(इ) के अधीन भार. सी. सं. 18/87-एच, ता. 26-5-86
2. भारतीय दण्ड संहिता की घारा 420 के साथ पठित घारा 120व के अधीन भार. सी. सं. 30/87-एच, तारीख 30-7-87 और भारतीय दण्ड संहिता की घारा 468, 477-क के साथ पठित घारा 420, 468, 471 तथा भ्रष्टाचार निवारण प्रधिनियम, 1947 की घारा 5(1)(इ) के साथ पठित घारा 5(2) के अधीन सारभूत अपराध
3. भारतीय दण्ड संहिता की घारा 420, 467, 468, 477-क और भ्रष्टाचार प्रधिनियम, 1947 की घारा 5(1)(इ) के साथ पठित 5(2) के अधीन भार. सी. सं. 31/87-एच, तारीख 30-7-87
4. भ्रष्टाचार निवारण प्रधिनियम, 1947 की घारा 5(1)(इ) के साथ पठित घारा 5(2) के साथ पठित भारतीय दण्ड संहिता की घारा 120 के अधीन भार. सी. सं. 34/87-एच 1 हैदराबाद, तारीख 31-8-87
5. भारतीय दण्ड संहिता की घारा 420, 468, 471 के साथ पठित घारा 120व के अधीन भार. सी. 44(क)/87-एच, ता. 30-11-87 और भ्रष्टाचार निवारण प्रधिनियम, 1947 की घारा 5(1)(इ) के साथ पठित घारा 420, 468, 471 के अधीन सारभूत अपराध।
6. भारतीय दण्ड संहिता की घारा 420 के साथ पठित घारा 120व और भ्रष्टाचार निवारण प्रधिनियम, 1947 की घारा 5(1)(इ) के साथ पठित घारा 5(2) के अधीन भार. सी. 4(क)/88-एच ता. 9-2-88।
7. भ्रष्टाचार की घारा 5(1)(इ) के साथ पठित घारा 5(2) के अधीन भार. सी. 15(ए)/88-हैदराबाद ता. 20-5-88।
8. भ्रष्टाचार निवारण प्रधिनियम, 1947 की घारा 5(1)(ग) तथा (घ) के साथ पठित घारा 5(2) के साथ पठित भारतीय दण्ड संहिता की घारा 420 के साथ पठित घारा 120व तथा भ्रष्टाचार निवारण प्रधिनियम, 1947 की घारा 5(1)(घ) और (ग) के साथ पठित घारा 5(2) के साथ पठित भारतीय दण्ड संहिता की घारा 420 के अधीन सारभूत अपराध।
9. भ्रष्टाचार निवारण प्रधिनियम, 1947 की घारा 5(1)(ग) और (घ) के साथ पठित 5(2) के साथ पठित भारतीय दण्ड संहिता की घारा 409 के अधीन भार. सी. -27(क)/88-एच, ता. 19-8-88।
10. भारतीय दण्ड संहिता की घारा 420 के साथ पठित घारा 120व के अधीन भार. सी. 33(ए)/88-एच, तारीख 30-9-88 भारतीय दण्ड संहिता की घारा 420, 468, 471 के अधीन और भ्रष्टाचार निवारण प्रधिनियम, 1988 की घारा 13(1)(घ) के साथ पठित घारा 13(2) [कुराने भ्रष्टाचार निवारण प्रधिनियम, 1947 की घारा 5(1) के साथ पठित घारा 5(2)] के अधीन सारभूत अपरा ।
11. भारतीय दण्ड संहिता की घारा 409, 468, 477-क के साथ पठित 120व और भ्रष्टाचार निवारण प्रधिनियम, 1947 की घारा 5(1)(घ) के साथ पठित घारा 5(2) के अधीन भार. सी. 3/89 एच, तारीख 31-1-89 तथा सारभूत अपराध।
12. भारतीय दण्ड संहिता की घारा 420, भ्रष्टाचार निवारण प्रधिनियम, 1947 की घारा 5(1)(घ) के साथ पठित घारा 5(2) के अधीन भार. सी. 11/89-एच तारीख 31-1-89
13. भारतीय दण्ड संहिता की घारा 409 के अधीन भार. सी. 12/89-एच, ता. 31-3-89

श्री भार. मोहन राव, आयो-कर प्रधिकारी, नलगोड़ा, इस समय आयो-कर विभाग बंगलौर में आ. क. प्रधिकारी।

श्री वाई शत्रुघ्न म. प्रधिकारी, आईओबी, कोठागुड्डम और 5 अम्ब।

श्री वाई सलम्बम्, पूर्व शाका प्रबन्धक, आईओबी, कोठागुड्डम्

श्री बी. कृष्ण महाप्रबन्धक आईओबीएए, हैदराबाद और अम्ब।

श्री बी. कृष्ण, निलाल उच्चत श्रेणी, उप-पोल और मास्टर, वैत्यपललौर भार. अम्ब।

श्री पी.एस.ए. पूर्व प्रबन्धक, यूको बैंक, पट्टिजनपुर गाँवा मेहक और तीन ग्र

के, रंगाभाष्टम-फर उग्राक्त, संथल रेंज, हैदराबाद।

श्री भार. बी.पी.यात्यारामण, प्रसारीय इंजीनियर (सौ-1 एम. सी. लैबर्स फिल्ड और 3 अम्ब।)

श्री मुरंनारायण, ग. रविवेश्वर (संकिळा कार) सहायक इंजीनियर (मास्टर) प्रबन्धी प्रधिनियम दूरसंचार विभाग, हिमायतनगर, हैदराबाद।

श्री वाई.एस. एस., दूरसंचार विभाग, भारतीय दूरसंचार विभाग, हिमायतनगर, हैदराबाद में तथा दो अम्ब।

के० सरत बाबू, लिपिनी.एच. हिमायतनगर हैदराबाद और 9 अम्ब।

के० कृष्ण मूर्ति उप. नियन्त्रक (लोको) एम.सी. रेल सिकन्दरा-बाद।

जी.ए. पद्मा राव, मि. रोक्किंग, भारतीय भौतिकीय संबंध वैज्ञानिक संस्कृति विभाग।

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14. भारतीय दण्ड संहिता की धारा 120व तथा भारतीय दण्ड संहिता की धारा 468 के साथ पठित भारतीय दण्ड संहिता की धारा 419, 420, 471 के के प्रधीन, आर.सी. 14/89-एच।

एम. मुनुरुगमी मुदलियर जी.ए. II (जी.ई.) (एल)/गोरीसन हंडी-निपर, हैदराबाद और एक अन्य।

उपायमध्य II

केन्द्रीय व्यवेषण अध्यक्ष, वि.पु. स्वा. विशाखापट्टम शास्त्रा में प्रबन्धन के प्रधीन मामलों को सूचा।

आर.सी. सं और गविस्तीकरण की तारीख तथा विष की धारा

अभियुक्त का नाम

1

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1. भ्रष्टाचार निवारण अधिनियम, 1947 की धारा 5(1)(क) के साथ पठित धारा 5(2) के प्रधीन आर.सी. 16/86-वी.एस.पी., तारीख 9-8-86
2. भारतीय दण्ड संहिता की धारा 471 के साथ इतने धारा 120व, 420, 467, 471 के प्रधीन भ्रष्टाचार निवारण अधिनियम, 1947 की धारा 5(1)(घ) के साथ पठित धारा 5(2) के प्रधीन आर.सी. 25 (ए)/86 जी.एस.पी., तारीख 3-11-86
3. भारतीय दण्ड संहिता की धारा 409, 467, 41, 477 के तथा भ्रष्टाचार निवारण अधिनियम, 1947 की धारा 5(1)(घ) के साथ पठित धारा 5(2) के प्रधीन, आर.सी. 28/87-वी.एस.पी.; तारीख 2-2-86
4. भारतीय दण्ड संहिता की धारा 420, 467, 73 और 472 के तथा भ्रष्टाचार निवारण अधिनियम, 1947 की धारा (1)(घ) के साथ पठित धारा 5(2) के प्रधीन, आर.सी. 26/87-वी.एस.पी., तारीख 4-8-87
5. भ्रष्टाचार निवारण अधिनियम 1947 की ध. 5(1)(क) के साथ पठित धारा 5(2) के प्रधीन, आर.सी. 28/87-वी.एस.पी., तारीख 24-8-87
6. भारतीय दण्ड संहिता की धारा 420, 47, 471 और भ्रष्टाचार निवारण अधिनियम, 1947 की धारा 5(1)(घ) के साथ पठित धारा 5(2) के प्रधीन आर.सी. 2/88-वी.एस.पी., तारीख 29-2-88
7. भारतीय दण्ड संहिता की धारा 420, 47, 471 और भ्रष्टाचार निवारण अधिनियम, 1947 की धारा 5(1)(घ) के साथ पठित धारा 5(2) के प्रधीन, आर.सी. 3/88-वी.एस.पी., तारीख 29-2-88
8. भारतीय दण्ड संहिता की धारा 420, 47, 467, 471 तथा भ्रष्टाचार निवारण अधिनियम, 1947 की धारा 5(1)(घ) के साथ पठित धारा 5(2) के प्रधीन, आर.सी. 5/88-वी.एस.पी., तारीख 29-2-88।
9. भारतीय दण्ड संहिता की धारा 420, 4, 477 के और भ्रष्टाचार निवारण अधिनियम, 1947 की धारा 5(1)(घ) के साथ पठित धारा (2) के प्रधीन आर.सी. 7/88 जी.एस.पी. तारीख 21-3-88
10. भारतीय दण्ड संहिता की धारा 120व, 467, 471, 477 के, भ्रष्टाचार निवारण अधिनियम, 1947 की ध. 5(1)(घ) के साथ पठित धारा 5(2) के प्रधीन, आर.सी. 9/88-एस.पी., तारीख 25-4-88
11. भारतीय दण्ड संहिता की धारा 420, 7व, भ्रष्टाचार निवारण अधिनियम, 1947 की धारा 5(1)(घ) के साथ इतने धारा 5(2) के प्रधीन, आर.सी. 15(ए)/88 वी.एस.पी., तारीख 20-7-88
12. भ्रष्टाचार निवारण अधिनियम, 1947 की धारा 12(2) के साथ पठित धारा 13(1)(क) के प्रधीन आर. 21(ए)/ 88 जी.एस.पी., तारीख 24-10-88
13. भारतीय दण्ड संहिता की धारा 4 और 471 के प्रधीन, आर.सी. 27 (एस)/88 जी.एस.पी., तारीख 12-88

ए. जी.के. राव, पूर्व शास्त्रा प्रबन्धक, युक्ति बैंक एच.एस.सी. एस. शास्त्रा आर.प्र. बंगलोर।

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14. भारतीय दंड संहिता की धारा 120वा 420, 467, 471, और 477क के अधीन, आर.सी. 28 (एस) / 88 वी.एस.पी., तारीख 26-12-88
15. भारतीय दंड संहिता की धारा 477क, और 409 के अधीन, आर.सी. 3 (एस) / 89-वी.एस.पी., तारीख 2-2-89
16. भारतीय दंड संहिता की धारा 120वा, 168, 120, 477क, भ्रष्टाचार निवारण अधिनियम, 1947 की धारा 5(1) के साथ पठित धारा 5(2) के अधीन आर.सी. 7(ए) / 89-वी.एस.पी., तारीख 29-3-89।
17. भारतीय दंड संहिता की धारा 120वा, 420, 477क, भ्रष्टाचार निवारण अधिनियम, 1947 की धारा 5(1) (घ) के साथ पठित धारा 5(2) के अधीन, आर.सी. 8(ए) / 89-वी.एस.पी., तारीख 30-3-89।
18. भारतीय दंड संहिता की धारा 409 भ्रष्टाचार अधिनियम, 1947 की धारा 5(1) (घ) के साथ पठित धारा 5(2) के अधीन, आर.सी. 36/87-वी.एस.पी., तारीख 31-12-87।

MINISTRY OF PERSONNEL, P. G. & PENSIONS
(Department of Personnel & Training)

ORDER

New Delhi. the 27th December, 1989

S.O. 144.—In exercise of the powers conferred by sub-section (1) of Section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946) the Central Government, with the consent of the State Government of Andhra Pradesh hereby extends the powers and jurisdiction of the members of the Delhi

1. हरीप्रसाद, पूर्व प्रबन्धक, कारपोरेशन बैंक, मल्डेपल्ली जाखा

जे, उपेन्द्र शर्मा रोकड़ सह नेबा लिपिक, बैंक आफ इंडिया, मुख्य शाखा, विशाखापट्टनम।

वी.वी. रमग्नूर्ण, अधिकारी जे.एम. ।, आन्ध्र बैंक, तुगो (आन्ध्र प्रदेश)

ए.के. गांगुली जे.मुख्य इंजीनियर, एस.ई. रेल कारागुर और अन्य

वी.भारद्वाजी, हिस्सात शिपथार्ड, लि.।

Special Police Establishment to the whole of the State of Andhra Pradesh for investigation of offences as mentioned in the Annexure attached to this order.

- (a) Annexure—14 cases (Hyderabad Branch)
Annexure—I-18 cases (Visakhapatnam Branch).
- (b) Attempts, attempts and conspiracies in relation to or in connection with one or more of the offences mentioned above and any other offence or offences committed in the course of the same transaction arising out of the same facts.

[No. 228/14/89-AV D. II]

ANNEXURE—I

R.C. No. and Date of Registration and Sections of Law

Name of the suspended accused

1. R.C. No. 18/86-H, dt. 26-5-86 u/s 5(2)r/w 5(1)(e) of Prevention of Corruption Act, 1947. Sri R. Mohan Rao, I.T. Officer, Nalgonda, now I.T. Officer at Bangalore, I.T. Dept.
2. R.C. No. 30/87-I, dt. 30-7-87 u/s 120 B r/w 420 IPC and Substantive Offences u/s 420, 468, 471 r/w 468, 477-A IPC and 5(2) r/w 5(1) (d) of Prevention of Corruption Act, 1947. Sri Y. Satyanandham, Oficer, IOB, Kothagudem and 5 others.
3. R.C. No. 31/87-H, dated 30-7-87 u/s 420, 467, 468, 477-A IPC and 5(2) r/w 5(1)(d) of Prevention of Corruption Act, 1947. Sri Y. Satyanandham, formerly Branch Manager, IOB, Kothagudem.
4. R.C. No. 34/87-AC/Hyd, dt. 31-8-87 U/s 120 B IPC r/w 5(2) r/w 5(1)(d) of P.C. Act. Sri V. Kumar, General Manager, IDPL, Hyderabad and another.
5. R.C. 44(A)/87-H, dt. 30-11-87 U/s 120 B r/w 420, 468, 471 IPC and 5(2) r/w 5(1)(d) and substantive Offences u/s 420, 468, 471 & 5(2) r/w 5(1)(d) of P.C. Act. Sri K.V. Kameshan, Lower Selection Grade, Sub-Post Master, Bellampally and four oths.
6. R.C. 4(4)/88-H, dated 9-2-88 U/s 120BIPC r/w 420 IPC and Sec. 5(2) r/w 5(1)(d) of P.C. Act, 1947. Sri P.S. Kumar, formerly manager, UCO Bank, Patighanpur Branch, Medak dt. and two others.
7. R.C. 15(A)/88-Hyd, dt 20-5-88 u/s 5(2) r/w 5(1)(c) of P.C. Act. K. Rangabhashyam, Deputy Commissioner of Income Tax, Central Range, Hyderabad.
8. R.C. 17(A)/88-H, dt. 23-6-88 U/s 120 B IPC r/w 420 IPC r/w 5(2) r/w 5(1)(c) and (d) of P.C. Act, 1947 and Substantive Offences u/s 420 IPC r/w 5(2) r/w 5(1)(d) and (c) of P.C. Act, 1947. Sri R.V.V. Suryanarayana, v.l. Engineer (C/I/SC Railway), Secunderabad and 3 others
9. R.C. 27(a)/88-H, dt. 19-8-88 U/s 409 IPC r/w 5(2) r/w 5(1)(d) and (d) of P.C. Act. B. Suryanarayana, Section Supervisor (Operative), Office of the Asst. Engr. Material Management, Deptt. of Telecommunication, Himayatnagar, Hyderabad.
10. R.C. 33(A)/88-H, dt. 30-9-88 U/s 120 B IPC r/w 420 IPC and Substantive Offences u/s 420 IPC, 468 IPC, 471 IPC and 13(2) r/w 13(1)(d) of P.C. Act, 1988 [Old. Sec. 5(2) r/w 5(1)(d) of P.C. Act, 1947] Sri Y.S.N. Murthy, Chief Manager, Corporation Bank, H.O. Manjal, formerly at Hyderabad and two others.
11. R.C. 3/89-H, dt. 31-1-1989 U/s 120 B IPC r/w 409, 468, 477 A IPC and Sec.5(2) r/w 5(1)(d) of P. C. Act and Substantive Offences. K. Sarat Babu, Clerk, SBH, H. M. Hyderbad and 9 others.

(1)

(2)

12. R.C. 11/89-H, dt. 31-3-89 U/s 420 IPC 5(2) r/w 5(1) (d) of P.C. Act, 1947. K. Krishna Murthy, Dy. Controller of Stores (LOCO S.C. Railway, Secunderabad.

13. R.C. 12/89-H, dated 31-3-89 u/s 409 IPC G.A. Padma Rao, UDC/Cashier, Geological Survey of India Hyderabad.

14. R.C. 14/89-H, u/s 120 B and u/s 419, 420, 471 IPC r/w 458 IPC M. Muuniswamy Mudaliar, G.A.II (GE) (N) Garrison Engineer Hyderabad and another.

ANNEXURE-II

RC No. and Date of Registration and Sections of Law	Name of the accused
1. R.C. 16/86-VSP, dated 9-8-86 u/s 5(2) r/w 5(1)(e) of P.C. Act.	M. Prabhakaram St. Ele. Engineer, S.C. Railway.
2. R.C. 25(A)/86-VSP, dt. 3-11-86 U/s 120 B, 420, 467, 477 A IPC r/w 471 IPC and 5(2) r/w 5(1)(d) of P.C. Act.	K. Konda Das, Sorting Assistant R.M.S.
3. RC. 28/86-VSP, dt. 22-12-86 u/s 409, 467, 471, 477A IPC and 5(2) r/w 5(1)(c) and (d) of P.C. Act.	E.J. Ravikumar, Dy. Manager (Stores), HSCL.
4. R.C. 26/87-VSP, dt 4-8-87 U/s 420 IPC, 467, 471, IPC and 477 A IPC 5(2) r/w 5(1)(d) of P.C. Act.	P. Chandrasekhar, Rural Development Officer, SBI/ADB, Bhimavaram
5. RC28/87-VSP, dt. 24-8-87 U/s 5(2) r/w 5(1)(e) of P.C. Act.	G.V.S. Lingam, Dist. Manager, FCI
6. RC.2/88-VSP, dt. 20-2-88 U/s 420, 477A, 471A, IPC and 5(2) r/w 5(2) r/w 5(1)(d) of P.C. Act.	P. Rammohan Rao, Branch Manager, Syndicate Bank.
7. RC.3/88-VSP, dt. 29-2-88 U/s 420, 477A, 471 IPC 5(2) r/w 5(1)(d) of P.C. Act.	P. Rammohan Rao, Branch Manager, Syndicate Bank.
8. R.C. 5/88-VSP, dt. 29-2-88 U/s 420, 477A, 467, 471 IPC U/s 5(2) r/w 5(1)(d) of P.C. Act.	Y. Siva Prasad, Andhra Bank
9. R.C. 7/88-VSP, dt 21-3-88 U/s 420, 467, 477A IPC and 5(2) r/w 5(1)(d) of P.C. Act.	K. Narayananmurthy, Regional Manager, Corporation Bank.
10. RC 9(A)/88-VSP, dt 25-4-88 U/s 120B, 420, 467, 471, 477 A IPC, 5(2) r/w 5(1)(d) of P.C. Act.	K. Seshachalam, Sr. Asst. Accounts, Dredging Corporation of India, and another.
11. RC. 15(A)/88-VSP, dt 20-7-88 U/s 420, 477A IPC 5(2) r/w 5(1)(d) of P.C. Act, 1947.	P. Kata Rao, Officer, JM, Ex. Br. Manager, SBH, M.V. Palam Colony, VSP, A/P Central Office A/Cs. Dpt., Hyd./Cl.II.OPS
12. R.C. 21(A)/88-VSP, dt 24-10-88 U/s 13(1)(c) r/w 13(2) of P.C. Act.	T. Ch. Ramaiah Naidu, Dy. Controller of Stores, Visakhapatnam Port Trust, Visakhapatnam (Cl. I OPS).
13. R.C.27(S)/88-VSP, dt. 26-12-88 U/s 420 and 471-A IPC	A.G.K. Rao, Ex Branch Manager, UCO Bank, HSCL Branch, A/P Bangalore.
14. R.C. 28(S)/88-VSP, dt. 26-12-88 U/s 120B, 420, 467, 471 and 477 A IPC.	D. Hari Parasad, Ex-Manager, Corporation Bank, Gandepalli Branch.
15. R.C. 3(S)/89-VSP, dt. 2-2-89 U/s 477A and 409 IPC	J. Upendra Sarma, Cash-Cum-Accounts Clerk, Bank of India Main Branch, Visakhapatnam.
16. R.C. 7(A)/89-VSP, dt 29-3-89 U/s 120B, 468, 420, 477A IPC and 5(2)r/w 5(1)(d) of P.C. Act.	B.V. Ramana Murthy Officer, JM I, Andhra Bank, Tuni (A.P.)
17. R.C. 8(a)/89-VSP, dt. 30-3-89 U/s .20B, 420, 477A IPC 5(2) r/w 5(1)(d) of P.C. Act.	A.K. Ganguli, Dy. Chief Engineer, SE Rly, Koraput and another.
18. R.C. 36/87-VSP, dt. 31-12-87 U/s 409 IPC, 5(2) r/w 5(1)(d) of P.C. Act.	G. Bhadrabaji, Hindustan Shipyard Ltd.

नई दिल्ली : जनवरी, 1990

का.आ. 145.—केंद्रीय गवर्नर, एण्ड प्रिक्या सहित, 1973 (1974 का 2) का धारा 24 का उपधारा (१) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए अंतर्राष्ट्रीय स्थिति विचारण, धर्मील और पुनर्जीवन न्यायालयों में श्री इश्वरलाल कंगड़ लाल धनराज, थोर रायस्ट्र अमर्यों के विद्यु दिल्ली विभाग पुलिस रायपत्र मामला में, आर.सी. 3/82-एम.आई. यू-11/एस आई.सी.-I, नई दिल्ली के विचारण का संचालन करने के बयोजन के लिए श्री जेट.एन. शेख, अधिवक्ता अंतर्राष्ट्रीय स्थिति लोक आभ्यासका नियुक्त करते हैं।

[संख्या 225/26/89-ए.वी.सी.-II]
गो. संतारामन, अमर दिल्ली]

New Delhi, the 1st January, 1990

S.O. 145.—In exercise of the powers conferred by subsection (8) of Section 24 of the Code of Criminal Procedure, 1973 (2 of 1974), the Central Government hereby appoints Sri Z. N. Shaikh, Advocate, Ahmedabad as Special Public Prosecutor for the purpose of conducting the trial of the Delhi Special Police Establishment case No. RC-3/82-SIU-II/SIC-I, New Delhi against Shri Ishwarlal Keshavlal Dhanani and eleven others in the trial, appellate and revisional courts at Ahmedabad.

[No. 225/26/89-AVD. II]
G. SITARAMAN, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

नई दिल्ली, 15 दिसम्बर, 1989

प्रधान कार्यालय संस्थापन

का.आ. 146.—केन्द्रीय प्रत्यक्ष कर बोर्ड (कार्य का विनियमन) नियम, 1964 द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए केन्द्रीय सरकार श्री डॉ.एन. पण्डेय को जो इस समय विशेष कार्य अधिकारी (विधायी प्रत्यक्ष कर) तथा राजस्व विभाग में पदेन विशेष सचिव के ग्राहके पर कार्यरत हैं, 15 दिसम्बर, 1989 के अपराह्न से श्री ए.एस. थिंड के स्थान पर अध्यक्ष, केन्द्रीय प्रत्यक्ष कर बोर्ड नियुक्त करता है। वह नियुक्ति एक बर्ष की अवधि के लिए होती है।

2. केन्द्रीय प्रत्यक्ष कर बोर्ड के मीडिया अध्यक्ष श्री ए.एस. थिंड को श्री डॉ.एन. पण्डेय के स्थान पर विशेष कार्य अधिकारी (विधायी प्रत्यक्ष कर) तथा राजस्व विभाग में पदेन विशेष मंत्री (8000/- रु. प्रतिमाह) नियम के अन्य से नियुक्त किया गया है।

[फा.सं. ए-19011/11/88-प्रगा.-I]
श्राव.के. जिन्दल, निदेशक (अधिकारी)

MINISTRY OF FINANCE

(Department of Revenue)

New Delhi, the 15th December, 1989

HEADQUARTERS ESTABLISHMENT

S.O. 146.—In exercise of the powers conferred by Rule 3 of the Central Board of Direct Taxes (Regulation of Business) Rules, 1964, the Central Government hereby appoints Shri T. N. Pandey, presently O.S.D. (Legislation-DT) with ex-officio status of Special Secretary in the Department of Revenue, as the Chairman, Central Board of Direct Taxes, vice Shri A. S. Thind, with effect from the afternoon of 15th December, 1989. The appointment will be for a period of one year.

2. Shri A. S. Thind, presently Chairman, Central Board of Direct Taxes, is appointed as O.S.D. (Legislation-DT) with ex-officio status of Special Secretary in the Department of Revenue (Rs. 8,000 p.m. fixed) vice Shri T. N. Pandey.

[F. No. A-19011/11/88-Ad. I]

R. K. JINDAL, Director (Admn.)

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 15 दिसम्बर, 1989

आयकर

का.आ. 147.—बोर्ड की दिनांक 27-10-89 की अधिसूचना सं. 8478 (का.आ. सं. 868E) की अनुसूची के अन्य से 3 के मामले कालम 4 के अन्तर्गत मुख्य आयकर आयुक्त, उ.प्र. कानपुर के क्षेत्राधिकार में, आयकर आयुक्त (वा.प्र.), आयगत जोड़ा जाए।

[फा. सं. 8535-फा.स. 279/121/89-प्र.कर.न्या.]
अजय मनकोटिया, विशेष कार्य अधिकारी (वा.प्र.)

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 15th December, 1989

Income-tax

S.O. 147.—In Board's notification No. 8478 (S.O. No. 868E) dated 27-10-89 under column 4 of the Schedule thereof against Sl. No. 3, in the Jurisdiction of Chief Commissioner of Income-tax, U.P., Kanpur, the Commissioner of Income-tax (Appeal), Agra may be added.

[No. 8535/F. No. 279/121/89-II-I]

AJAY MANKOTIA, Officer on Special Duty (Judl.)

(आर्थिक कार्य विभाग)

(बैंकिंग प्रभाग)

नई दिल्ली, 27 दिसम्बर, 1989

का.आ. 148.—राष्ट्रीयकृत बैंक (प्रबंध और प्रक्रिया उपबंध) योजना, 1970 की धारा 3 की उपधारा (ज) के अनुसरण में केन्द्रीय सरकार, वित्त मंत्रालय, आर्थिक कार्य विभाग (बैंकिंग प्रभाग), नई दिल्ली के अपर सचिव श्री डॉ.मार. मेहता को श्री एम.सी. सत्यवाही के स्थान पर एटद्वारा केनरा बैंक के निवेशक के रूप में नियुक्त करती है।

[स. एक. 9/6/89-रा.धा.-I]

एम.एस. सीतारामन, अपर सचिव

(Department of Economic Affairs)

(Banking Division)

New Delhi, the 27th December, 1989

S.O. 148.—In pursuance of sub-clause (h) of clause 3 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970, the Central Government hereby appoints Shri D. R. Mehta, Additional Secretary, Ministry of Finance, Department of Economic Affairs (Banking Division), New Delhi as a Director of Canara Bank vice Shri M. C. Sayawadi.

[F. No. 9/6/89-BO. I]

M. S. SEETHARAMAN, Under Secy.

बारिण्य मंत्रालय

मुख्य नियंत्रक आयात नियंत्रित का कार्यालय

आदेश

नई दिल्ली, 28 दिसम्बर, 1989

का.आ. 149.—म. आर. तुलसीदास एक्सपोर्ट प्रा.लि., बम्पर्ड को अन्वित एक ब्रेडिंग मर्फिन, इन्डेन्टिंग सिलिन्डर एंड मटिंग एंड शार्निंग मर्फिन के आयात के लिये मुक्त कियें। मुद्रा के अन्तर्गत 10,32,800/- रुपये (दस लाख, बासीस हजार, छाठ सौ रुपये मात्र) के लिए एक आयात लाइसेंस सं. पी/सी/जी/2125092 विनांक 9-5-88 प्रदान किया गया था।

फर्म ने उपर्युक्त लाइसेंस को सीमान्त्रिक/मुद्रा विनियम नियंत्रण प्रयोजन प्रति की अनुसिपि प्रति जारी करने के लिये इस आधार पर आवेदन किया है कि मूल सीमान्त्रिक प्रयोजन/मुद्रा विनियम नियंत्रण प्रति यों अवश्य गुम हो गई है। आगे यह भी उल्लेख किया है कि लाइसेंस के सीमान्त्रिक प्रयोजन/मुद्रा विनियम नियंत्रण प्रति (कृपा सीमान्त्रिक प्रयोजन के पास पंजीकृत नहीं यी) इन्सिपि सीमान्त्रिक प्रयोजन प्रति के मूल का बिन्दुल सा उपाय नहीं किया गया है।

2. अपने तरफ के समर्पण में, साइमेंसियारी ने नोटरों पब्लिक, दिल्ली के समान वित्तीय लेकर एक यथावधन दाखिल किया है। तदनुसार मैं संतुष्ट हूं कि आयात लाइसेंस सं. पी/सी/जी/2125092 विनांक 9-5-88 का, मूल सीमान्त्रिक प्रयोजन प्रति/मुद्रा विनियम नियंत्रण प्रति फर्म से खो अवश्य गुम हो गई है। 7-12-1955 के थायसांसोबिन आयात नियंत्रण (प्रादेश, 1955 की धरा 9 (ग)) द्वारा प्रदत्त शक्तियों का प्रयोग करने हुए मैसेस ग्राम तुलसीदास एक्सपोर्ट प्रा.लि. बम्पर्ड, को जारी 9-5-88 की उपर्युक्त मूल सीमान्त्रिक प्रयोजन/मुद्रा विनियम नियंत्रण प्रति में पी/सी/जी/2125092 की एटद्वारा यह किया जाता है।

3. उक्त लाइसेंस की सीमान्त्रिक प्रयोजन/मुद्रा विनियम नियंत्रण प्रति की अनुसिपि एक दूरी को द्वारा से जारी की जा रही है।

[स. सी.जी.-1/90/10/89-90/542]

ग्रा.मार. अहोर, उप-मुख्य नियंत्रक, आवास-निवास

MINISTRY OF COMMERCE

(Office of the Chief Controller of Imports & Exports)

ORDER

New Delhi, the 28th December, 1989

S.O. 149.—M/s. R. Tulsidas Exports Pvt. Ltd., Bombay were granted an Import Licence No. P/CG/2125092 dt. 9-5-88 for Rs. 10,32,800 (Rupees Ten Lakh Thirty Two Thousand and Eight Hundred only for import of Cleaning & Grading machine, Indented Cylinder & Cutting and Shining machine under Free Foreign Exchange.

The firm has applied for issue of Duplicate copy of Customs/Ex. control purposes copy of the above mentioned licence on the ground that the original Customs Purposes/Exchange Control copy of the licence has been lost or misplaced. It has further been stated that the Customs purposes/Ex. Control copy of the licence was not registered with any Customs Authority and as such the value of Customs Purpose copy has not been utilised at all.

2. In support of their contention, the licensee has filed an affidavit on stamped paper duly sworn before a Notary Public Delhi. I am accordingly satisfied that the original Customs Purposes/Ex. Control copy of import licence No. P/CG/2125092 dt. 9-5-88 has been lost or misplaced by the firm. In exercise of the powers conferred under sub-clause 9(cc) of the Import (Control) Order, 1955 dated 7-12-1955 as amended the said original Customs Purposes/Ex. Control copy No. P/CG/2125092 dt. 9-5-88 issued to M/s. R. Tulsidas Exports Pvt. Ltd., Bombay is hereby cancelled.

3. A duplicate Customs Purposes Ex. Control copy of the said licence is being issued to the party separately.

[No. CG. I/908/10/89-90/542]

B. R. AHIR, Dy. Chief Controller of Imports & Exports

आवेदन

नई दिल्ली, 2 जनवरी, 1990

का.मा. 150.—भै. हरीश कुमार केवल राम मडनानी, 55/1 हिन्दुस्तान चौक, मुंबई कालोनी, मुंबई-400080 को यह भी एम डब्ल्यू सेल्स कार पार्क इंजिन सं. 0097256318 और बीमी के साथ इंजिन सं. 0097256318 के आयोग के लिए सीमापूल निकासी परमिट सं. पी/जे/3078872 वितानक 8-6-89 भूल्य 200,000/- रुपये (दो लाख रुपये भाव) दिया गया था। आवेदक ने उपर्युक्त सीमापूल निकासी परमिट को अनुलिपि प्रति के लिए हम ध्वारा पर आवेदन किया है कि मूल सीमापूल निकासी परमिट जो गया था और सीमापूल निकासी परमिट मूल का बिल्कुल भी उपयोग नहीं किया गया है।

2. अपने तर्क के समर्थन में लाइसेंसधारी ने विहित व्यापिक प्राधिकारी के सामने विधिवत् धारण सेकर एक शपथ पत्र दाखिल किया है। तबनुसार मैं संतुष्ट हूँ कि मूल सी.सी.पी.सं. पी/जे/3078872 वितानक 8-6-89 आवेदक से भी गया है। समय-समय पर यथासंबोधित ध्वान (नियन्त्रण) आदेश, 1955 की उपधारा 9 (गग) के अन्तर्गत प्रदत्त शक्तियों का प्रयोग करते हुए मैं हरीश कुमार केवल राम मडनानी को जारी किए गए उक्त मूल सी.सी.पी.सं. पी/जे/3078872 वितानक 8-6-89 को एनडारा रद्द किया जाता है।

3. पार्टी को सीमापूल निकासी परमिट को अनुलिपि प्रति अन्तर से जारी की जा रही है।

[फा.सं. ए/एम- 87/88- 89/वी एन एस/2508]
श्रीमती माया डी. केम, उग्र मुख्य नियंत्रक,
प्रायान-नियंत्रित, हठे मुख्य नियंत्रक, प्रायान-नियंत्रित

ORDER

New Delhi, the 2nd January, 1990

S.O. 150.—Mr. Harish Kumar Kewal Ram Madnani, 55/5, Hindustan Chowk, Muland Colony, Muland, Bombay-400080, was granted a Customs Clearance Permit No. P/J/3078872 dated 8-6-1989 for Rs. 2,00,000 (Two lakh only) for one BMW Saloon Car R.H.D. fitted with power glass stereo Tape deck and Radio, Engine No. 0097256318, chassis No. 0097256318 the applicant has applied for issue of Duplicate copy of the above mentioned Customs Clearance Permit on the ground that the original CCP has been misplaced/lost. It has further been stated that the original CCP was not registered with any Customs authority and as such the value of the CCP has not been utilised at all.

2. In support of his contention, the licensee has filed an affidavit duly sworn before appropriate judicial authority. I am accordingly satisfied that the original CCP No. P/J/3078872 dt. 8-6-1989 has been lost by the applicant. In exercise of the powers conferred under Sub-Clause 9(cc) of the Import (Control) Order, 1955, dated 7-12-1955 as amended from time to time, the said original CCP No. P/J/3078872 dt. 8-6-1989 issued to Mr. Harish Kumar Kewal Ram Madnani is hereby cancelled.

3. A duplicate copy of the Customs Clearance Permit is being issued to the party separately.

[F. No. ए/एम-87/88-89/BL/2508]

MRS. MAYA D KEM, Dy. Chief Controller of Imports & Exports, for Chief Controller of Imports & Exports.

उच्चान्त भवाल्य

(राज्यान्त और पेट्रोलियम विभाग)

नई दिल्ली, 4 जनवरी, 1990

पा.मा. 151. यह केन्द्रीय सरकार को यह प्रतीत होता है कि, लोक जीव में यह आवश्यक है कि महाराष्ट्र राज्य में गांव गवाहाण (शिवाजीनगर) तहसील पांडेल जिला गायगड से गांव बेणरे तहसील पेण जिला रायगड नक्का पेट्रोलियम नेस अथवा नीसिंगक गैस घटवा एन्ड यूनिट अथवा अन्य खनिज पदार्थों के परिवहत के लिए, पाईप लाईन, इंडियन पेट्रोलियमिल्स कॉर्पोरेशन लिमिटेड, महाराष्ट्र गैस फ्लॉकर कॉम्पनी क्षेत्रालय विभाग, वितानक (प.) मंड़ब, डाः विठ्ठल जानी चाहिये।

प्री. ग्रत: यह प्रस्तीत होता है कि ऐसी लाईनों की विभाने के प्रयोजन के लिए एन्ड्रेगढ़ अनुसूची में वर्णित भूमि में उपयोग का अधिकार अंजित करना आवश्यक है।

अतः आव पेट्रोलियम और खनिज पाइपलाईन (भूमि में उपयोग के अधिकार का अंजन) अधिनियम 1962 (1962 का 50) की धारा 3 की उपधारा (1) वारा प्रकर शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार ने उसमें उपयोग का अधिकार अंजित करने का अपना अधिय एन्ड्रेगढ़ घोषित किया है। वर्णते कि उक्त भूमि में हितबद्ध कोई झक्कित, उम भूमि के नीचे पाइपलाईन विभाने के लिए धाक्केप सक्षम प्राधिकारी इंडियन पेट्रोलियमिल्स कॉर्पोरेशन लिमिटेड, महाराष्ट्र गैस फ्लॉकर कॉम्पनी, नागोरोंग तहसील रोहा, जिला गायगड को इस अधिकृतता की तारीख से 21 दिनों के भीतर कर सकेगा।

प्री. एसा आवेदन करनेवाला हर व्यक्ति विनिविष्ट यह भी कष्ट करेगा कि क्या वह चाहता है कि, उसकी सुनवाई व्यक्तिगत हो या किसी विवि व्यवसायी की माफें।

मनुष्यों

प्र. सं.	गोव का नाम	तहसिल	जिला	मर्ज़ी नंबर	दिनांक नं.	पट सं	शेष
गण्डाण	पत्रपेन	रायगढ़					हे. आर
				101	3 पै	--	0-06.5
				101	3 पै	--	0-04.8
				102	1वं पै	--	0-00.2
				103	3 पै	--	0-04.8
				103	4 पै	--	0-03.0
				103	5 पै	--	0-06.5
				105	5 पै	--	0-07.3
				105	4 पै	--	0-01.7
				105	3 पै	--	0-06.8
				105	2 पै	--	0-00.7
				106	1 पै	--	0-00.2
				106	4 ट	--	0-11.0
				107	1 पै	--	0-06.8
				107	2 पै	--	0-00.5
				107	3 पै	--	0-01.2
				88 अ	2 पै	--	0-01.5
				88अ	3 पै	--	0-01.0
				108	1 पै	--	0-00.5
				108	2 पै	--	0-03.6
				109	1+2 पै	--	0-04.8
				109	3 पै	--	0-00.5
				109	4 पै	--	0-02.5
				112	1प्रपै	--	0-02.0
				112	1ब्रपै	--	0-01.3
				112	1क्रपै	--	0-02.3
				84	4 पै	--	0-00.5
				113	3 पै	--	0-00.7
				82	1 पै	--	0-01.0
				82	2 पै	--	0-00.5
				114	1 ट	--	0-09.6
				114	2 पै	--	0-00.7
				114	3 पै	--	0-09.8
				116	2 पै	--	0-04.2
				116	3 पै	--	0-08.8
				116	4 पै	--	0-04.8
				127	1बं पै	--	0-13.3
				127	2 पै	--	0-06.0
				127	3 पै	--	0-07.8
				127	5 पै	--	0-09.6
				121	1+2 पै	--	0-18.1
				121	4 पै	--	0-00.2
				121	5 पै	--	0-00.7
				122	5 पै	--	0-23.1
				124	1 पै	--	0-00.8
				124	2 पै	--	0-04.2
				124	3 पै	--	0-00.7
				124	4 पै	--	0-04.3
				124	5 पै	--	0-03.5
				124	6 पै	--	0-90.7

प्र. सं.	गांव का नाम	तहसील	ज़िला	सर्वे नंबर	हिस्सा नं.	पट सं.	क्षेत्र
	गवाण	पनवेल	शिवगढ़	124	8 पै	--	0-02.0
				126	1 पै	--	0-06.5
				126	2 पै	--	0-05.5
				126	5 पै	--	0-00.2
				126	3 पै	--	0-06.5
				125	1 पै	--	0-08.5
				125	3 पै	--	
				75	1 + 2 पै	--	0-14.6
				74	1 पै	--	0-01.5
				61	6 पै	--	0-01.7
				61	7 पै	--	0-11.1
				73	1 पै	--	0-01.1
				62	5 पै	--	0-03.5

[म. 34027/4/87 दो सा III भिन्न -II]

एम.के. गुलाब, डेस्क अधिकारी

MINISTRY OF INDUSTRY
(Department of Chemicals & Petrochemicals)
New Delhi, the 4th January, 1990

S.O. 151.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum, oil, natural gas, etc. or any mineral from village Gayhan (Shiwagi Nagar) Tahsil Panvel District Raigad to village Bendse Tahsil Pen District Raigad in the State of Maharashtra, pipelines should be laid through the agency of Indian Petrochemicals Corporation Limited, Maharashtra Gas Cracker Complex, Division Vile Parle (W), Bombay.

And whereas, it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in the land described in the schedule annexed hereto;

Now, therefore in exercise of the powers conferred by Sub-section (i) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 (50 of 1962), the Central Government hereby notify their intention to acquire the right of user in the lands referred to in the schedule;

Any person interested in the said lands having any objection for laying the pipelines through the said lands may prefer an objection within 21 days from the date of the notification, to the Competent Authority, Indian Petrochemicals Corporation Limited, Maharashtra Gas Cracker Complex Division, Nagothane, Tahsil Roha, District Raigad.

And every person making such an objection shall state specifically whether he wishes to be heard in person or by a legal practitioner.

SCHEDULE

S.No	Name of Village	Tahsil	District	Survey No.	Hissa No.	Gat No.	Area	
							H.	R.
	Gavan	Panvel	Raigad	101	3A(P)	-	0-01.5	
				101	3B(P)	--	0-04.8	
				102	1B(P)	--	0-00.2	
				103	3(P)	--	0-04.8	
				103	4(P)	--	0-03.0	
				103	5 (P)	--	—06.5	
				105	5 (P)	--	—07.3	
				105	4 (P)	--	0-01.7	
				105	3 (P)	--	0-05.8	
				105	2 (P)	--	0-00.7	
				105	1(2) (P)	--	0-00.2	
				107	4 (P)	--	0-11.0	
				107	1 (P)	-	0-06.8	
				107	2 (P)	--	0-00.5	

S No.	Name of Village	Tahsil	Director	Survey No.	Hissa No.	Gat No.	Area.
						H	R
	Gavari	Panvel	Raigad	107	3 (P)	—	0-01.2
				88 A	2 (P)	—	0-01.5
				88 A	3 (P)	—	0-01.0
				103	1 (P)	—	0-00.5
				103	2 (P)	—	0-03.6
				109	1+2(P)	—	0-04.8
				109	3 (P)	—	0-00.5
				109	4 (P)	—	0-02.5
				112	1A(P)	—	0-02.0
				112	1B(P)	—	0-01.3
				112	1C(P)	—	0-02.3
				84	4(P)	—	0-00.5
				113	3 (P)	—	0-00.7
				82	1 (P)	—	0-01.0
				82	2 (P)	—	0-00.5
				114	1 (P)	—	0-08.6
				114	2 (P)	—	0-00.7
				114	3 (P)	—	0-09.8
				116	2 (P)	—	0-04.2
				116	3(P)	—	0-08.8
				116	4(P)	—	0-04.8
				127	1B(P)	—	0-13.3
				127	2 (P)	—	0-06.0
				127	3 (P)	—	0-07.8
				127	5 (P)	—	0-0.69
				121	1+2(P)	—	0-18.1
				121	4 (P)	—	0-00.2
				121	5 (P)	—	0-00.7
				122	5 (P)	—	0-23.1
				124	1 (P)	—	0-00.8
				124	2 (P)	—	0-04.0
				124	3 (P)	—	0-00.7
				124	4 (P)	—	0-04.3
				124	5 (P)	—	0-03.5
				124	6 (P)	—	0-00.7
				124	8 (P)	—	0-02.0
				126	1 (P)	—	0-06.5
				126	2 (P)	—	0-05.5
				126	5 (P)	—	0-00.2
				126	3 (P)	—	0-06.5
				125	1 (P)	—	0-00.5
				125	2 (P)	—	0-00.7
				75	1+2(P)	—	0-14.6
				74	1 (P)	—	0-01.5
				61	6(P)	—	0-01.7
				61	7(P)	—	0-11.1
				73	1 (P)	—	0-01.2
				62	5 (P)	—	0-03.5

[NO. 34027/1/87-PC.III (Vol. II)
S. K. GUPTA, Desk Officer

सांख एवं नागरीक पूर्ति भवान

(नागरिक पूर्ति विभाग)

भारतीय मानक अधिकारी

नई दिल्ली, 21 विसंवार, 1989

का.प्रा. 15.—भारतीय मानक अधिकारी (प्रमाणित) नियम, 1987 के नियम 7 के उपनियम (ब) के अनुसरण में प्रदानार्थ अधिकृति किया जाता है कि जिन भारतीय मानकों के विवरण नीचे घट्टमुद्दी में दिए गए हैं, वे चढ़ कर दिए गए हैं और वापस देकिए गए हैं।

अनुसूची

क्रम सं.	किए गए भारतीय मानक को संख्या और वर्ष	उम्मीद राजपत्र अधिसूचना को संख्या और तिथि, जिसमें भारतीय मानक के निर्धारण को अधिसूचना छपा हो।	टिप्पणी
(1)	(2)	(3)	(4)
1. IS .2983-1971	का.आ.सं. 886 विनाक 1973 03 12, भारत के राजपत्र भाग 2, खंड 3, उपखंड (2), दिनांक 1973 03 24 में प्रकाशित	क्षेत्रीक ये ममका जाता है कि इस समय इन मानकों का प्रथिक उपयोग नहीं हो रहा है। अतः इन्हे बापस लिया जाता है।	
2. IS .5243-1969	का.आ.सं. 89 विनाक 1969 12 24, भारत के राजपत्र भाग 2, खंड 3, उपखंड (2), विनाक 1970 01 10 में प्रकाशित		
3. IS .5174-1969	का.आ.सं. 639 विनाक 1970 02 06 भारत के राजपत्र भाग 2, खंड 3 उपखंड (ii) विनाक 1970 02 21 में प्रकाशित	क्षेत्रीक ये ममका जाता है कि इस समय इस मानक का प्रथिक उपयोग नहीं हो रहा है। अतः इसे बापस लिया जाता है।	

[सं. सी. एमडी/13:7]

MINISTRY OF FOOD AND CIVIL SUPPLIES

(Dept Of Civil Supplies)

BUREAU OF INDIAN STANDARDS

New Delhi, the 21st December, 1989

S.O. 152.—In pursuance of sub-rules (b) of Rule 7 of the Bureau of Indian Standards Rule, 1987 it is, hereby, notified that the Indian Standard(s), particulars of which are mentioned in the schedule given hereafter, have been cancelled and stands withdrawn :

SCHEDULE

Sl. No.	No & Year of the Indian Standard Cancelled	S.O. No. & Date of the Gazette Notification in which Establishment of the Indian Standard was Notified	Remarks
(1)	(2)	(3)	(4)
1. IS : 2983—1971	S.O. 886 dated 1973 03 12 published in the Gazette of India, Part-II, Section--3, Sub-section (ii) dated 1973 03 24.		
2. IS : 5243 1969	S.O. 89 dated 1969 12 24 published in the Gazette of India, Part-II, Section--3, Sub-section (ii) dated 1970 01 10.		
3. IS : 5174 1969	S.O. 639 dated 1970 02 06 published in the Gazette of India, Part-II, Section--3, Sub-section (ii) dated 1970 02 21.		

[No. CMD/13 : 7]

का.आ. 153.—भारत के राजपत्र, भाग 2, खंड 3, उपखंड (2), विनाक 1984 08 11 में प्रकाशित खाद्य एवं नापारिक पूर्ण मत्तान्वय नापारिक पूर्ण विशेषण (भारतीय मानक न्यूरों) के प्रधिसूचना मंडल का.आ. 2576 विनाक 1984 07 11 का आणिक संशोधन करने हुए मानक भारतीय व्यूरों एवं दस्तावेज अधिसूचित करता है कि कुशन बनाने के लिए रबड़कून कौपर की चट्टरें एवं दस्तरों के गति इकाई मुहरांकत करें, जिनका विवरण नीचे अनुसूची में दिया गया है, संशोधन कर दी गई है। मुहरांकत करें, संशोधन वर्ष 1989 01 01 से लागू होगा।

अनुसूची

क्रम सं.	उत्पाद/उत्पाद श्रेणी	मंडल भारतीय मानक की संख्या और वर्ष	हकाई	प्रति हकाई मुहरांकत करें	(5)
(1)	(2)	(3)	(4)	(5)	
1. कुशन बनाने के लिए रबड़कून कौपर की चट्टरें	IS 8391—1977	एक टन	(i) रु. 25.00 प्रति हकाई पहली 250 इकाईयों के लिए, श्रीर		
			(ii) रु. 15.00 प्रति हकाई 251 वीं श्रीर इकाई से प्रथिक की इकाईयों के लिए।		

[संख्या सी. एम डी/13-10]

S.O. 153.—In partial modification of the Ministry of Food and Civil Supplies (Dept. of Civil Supplies) (Bureau of Indian Standards) notification number S.O. 2576 dated 1984-07-11 published in the Gazette of India, Part-II, Section-3, Sub-section (ii) dated 1984-08-11 the Bureau of Indian Standards, hereby, notifies that the marking fee per unit for rubberized coir sheets for cushioning details of which are given in the Schedule hereto annexed, has been revised. The revised rate of marking fee shall come into force with effect from 1989-01-01 :

SCHEDULE

Sl. No.	Product/Class of Product	No. & Year of the Relevant Indian Standard	Unit	Marking fee per Unit
(1)	(2)	(3)	(4)	(5)
1.	Rubberized coir sheets for cushioning	IS : 8391 -1977	One Tonne	(i) Rs.25.00 per unit for the first 250 units and (ii) Rs.15.00 per unit for the 251st unit and above.

[No. CMD/13:10]

का.आ. 154.—भारतीय मानक आदर्श विनियम 1988 के विनियम 3 के उपचिनियम (6) के प्रत्युषरण में गोदावारा अधिसूचित किया जाता है कि लाइसेंस संख्या सीएम/एल. 1345544 जिनके विवरण नीचे दिए गए हैं, जो कर्म ग्राम लाइसेंस जारी न रखने के प्रत्युरोध के कारण प्रत्युषरण में प्रत्येक लाइसेंस के सामने वीर्य गई नियमों से रद्द कर दिए गए हैं।

प्रत्युषर्चं

क्रम सं.	लाइसेंस संख्या तथा दिनांक	नाम व पता	रद्द लाइसेंस के अन्तर्गत वस्तु/प्रक्रम	ममता भारतीय मानक	रद्द करने का तारीख
(1)	(2)	(3)	(4)	(5)	(6)
1.	सीएम/एल-1345544 1984-10-01	मै. धनपतमल ज्वाला प्रमाद फीड मिल्स, 33, शिवाजी मार्ग, नई दिल्ली	पशुओं के लिए मिश्रित आहार किसी I और II	IS:2052-1979 पशुओं के लिए मिश्रित आहार की विशिष्ट (वैसरा पुनरीक्षण)	1989 09 30

[सं. सी.एम. डी/55:345544]

S.O. 154.—In pursuance of sub-regulation(6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulation 1988, the Bureau of Indian Standards hereby notifies that licence No. CM/L-1345544 particulars of which are given below has been cancelled with effect from 1989-09-30 on account of lack of interest.

SCHEDULE

Licence No. & Date	Name and Address of the Licensee	Article/Process Covered by the license Canceled	Relevant Indian Standards
(1)	(2)	(3)	(4)
CM/L-1345544 1984-10-01	M/s Dhanpatmal Jawaladas Feed Mills, 33, Shivaji Marg, New Delhi,	Compounded Feed for Cattle Type I and Type II	IS : 2052-1979 Specification for Compounded Feeds For Cattle (Third Revision)

[Nv.CMD/55 : 1345544]

का.आ. 155.—भारतीय मानक आदर्श विनियम 1988 के विनियम 5 के उपचिनियम (6) के प्रत्युषरण में गोदावारा अधिसूचित किया जाता है कि लाइसेंस संख्या सीएम/एल-1921655 जिनके विवरण नीचे दिए गए हैं, जो कर्म ग्राम लाइसेंस जारी न रखने के प्रत्युरोध के कारण प्रत्युषर्चं में प्रत्येक लाइसेंस के सामने वीर्य गई नियमों से रद्द कर दिए गए हैं। त्रुटि (अग्रिम) मुहरकर गुलक के प्राप्त न होने के कारण।

प्रत्युषर्चं

क्रम सं.	लाइसेंस संख्या तथा दिनांक	लाइसेंस के नाम व पता	रद्द लाइसेंस के अन्तर्गत वस्तु/प्रक्रम	ममता भारतीय मानक	रद्द करने की तारीख
(1)	(2)	(3)	(4)	(5)	(6)
1.	सीएम/एल-1921655 1989-01-16	म. आरे चन्द्र केसरी मल पांडबाल (प्रा.) निः. डैकार्ड-627811 (तमिलनाडू)	बीड़ी	IS: 1925-1974 बीड़ी की विशिष्ट (वैसरा पुनरीक्षण)	1989-01-16

[सं. सीएम.डी/55:1921655]

S.O. 155.—In pursuance of sub-regulation(6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulation 1988, the Bureau of Indian Standards hereby notifies that licence No. CM/L-1921655 particulars of which are given below has been cancelled with effect from 1989-01-16 on account of non-receipt of minimum (advance) marking fee.

SCHEDULE

Licence No. & Date	Name and Address of the licensee	Article/Process Covered by the licence Cancelled	Relevant Indian Standards		
(1)	(2)	(3)	(4)	(5)	(6)
1921655 1989-01-16	M/s Pyarchand Kesharimal Porwal (P) Ltd., Tenkasi-627 811 (Tamil Nadu)	Bidis	IS : 1925-1974 Specification for Bidis (Second revision) [NO.CMD/55 : 1921655]		

का.प्रा. 156.—भारतीय मानक अमेरिकी विनियम 1988 के विनियम 5 के उत्तराधिकार अधिसूचित किया जाता है कि लाइसेंस संख्या रोल/एल.1919466 जिसके विवरण नीचे दिए गए हैं, जो कमं डारा लाइसेंस जारी न रखने के अनुरोध के कारण अनुमति में प्रत्येक लाइसेंस के मामले वाले गई तिथियों से रद्द कर दिए गए हैं।

अनुमति

क्रम लाइसेंस संख्या तथा दिनांक लाइसेंसदार का नाम य पता रद्द लाइसेंस के प्रत्यरोपण वस्तु/प्रक्रम सम्बद्ध भारतीय मानक रद्द करने का तारीख
म.

1. रोल/एल-1919466 1989-01-01	मै. फ्लोट इक्विपमेंट मैनुफैक्चर. कै. १-३०, इंडस्ट्रियल पूर्षा, गोविंदपुरा, पुरा (भोपाल)-462 023	पांचवर अश्वर	IS:9020-1979 पांचवर धूणरों के लिए सूखा अपेक्षाओं की विशिष्ट	1989-01-01
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[म. सीएमडी/55:1919466]
पम. सुब्रह्मण्यन, अपर महानिवेशक

S.O. 156. In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulation 1988, the Bureau of Indian Standards hereby notifies that licence No. CM/L-1919466 particulars of which are given below has been cancelled with effect from 1989-01-01 on account of non-receipt of minimum (advance) marking fee.

SCHEDULE

Licence No. & Date	Name and Address of the licensee	Article/Process Covered by the licence Cancelled	Relevant Indian Standards
(1)	(2)	(3)	(4)
CM/L-1919466 1989-01-01	M/s Fleet Equipment Mfg. Co., I-B, Industrial Area, Govindpura, BHOPAL- 462 023	Power Threshers	IS : 9920-1979 Specification for Safety Requirements for Power Threshers [NO.CMD/55 : 1919466] S. SUBRAHMANYAN, Ad'l. Director General

स्वास्थ्य और परिवार कल्याण मंत्रालय

नई दिल्ली, 10 नवम्बर, 1989

का.प्रा. 157: भारतीय पत्रन स्वास्थ्य विनियम, 1955 के नियम-2 के खण्ड 5 के उत्तराधिकार (क) के अनुसार में तथा एम मंत्रालय को दिनांक 20 दिसम्बर, 1983 को इसी मंदिर की अधिकृतता के अधिकारण में उन बाबी के सिवाय अधिकारी करने हुए जिन्हें ऐसे अधिकारण में पहले किया गया है अथवा करने में लोप किया गया है केंद्रीय मंत्रालय एवं द्वारा इसके माध्यम अनुबंधित अनुसूची के क्रम मध्या 1 के मामले कालम (2) में निर्दिष्ट अधिकारी को उसके कालम (3) में ऐसे प्रतिविधि में निर्दिष्ट प्रमुख पत्रन का पंचवंश स्वास्थ्य अधिकारी नियुक्त करती है।

अनुसूची

म. अ. अधिकारी और उसके कार्यालय का नाम	पत्रन	
1	2	3

1. मुख्य चिकित्सा अधिकारी, न्यू मंगलोर
पत्रन स्वास्थ्य अध्यात्म, न्यू मंगलोर

[म. अ. 12020/8/81-प्राई.एच., (भाग-2)]
श्रीमती अमरजीत कीर, प्रवर सचिव

MINISTRY OF HEALTH & FAMILY WELFARE

New Delhi, the 10th November, 1989

S.O. 157.—In pursuance of sub-clause (1) of clause (5) of rule 2 of the Indian Port Health Rules, 1955, and in supersession of this Ministry's Notification of even number, dated the 20th December, 1983, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the officer specified in column (2) against serial No. 1 of the Schedule annexed hereto to be ex-officio Health Officer of the Major Port specified in corresponding entry in column (3) thereof.

SCHEDULE

Sl.No.	Officer and his office name	Port
(1)	(2)	(3)
1.	Chief Medical Officer Port Health Hospital, New Mangalore.	New Mangalore

[No. O-12020/8/81-IH(Vol.II)]
Smt. AMARJEET KAUR, Under Secy.

नई दिल्ली, 21 दिसंबर, 1989

का.आ. 158.—केन्द्रीय सरकार, भारतीय प्रायुक्तिकान परिषद, अधिनियम, 1956 (1956 का 102) को धारा 2 को उपधारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारतीय प्रायुक्तिकान परिषद में परीक्षण करने के पश्चात्, उन्हें अधिनियम की प्रयम अनुसूची में निम्नलिखित और संशोधन करती है, प्रत्यक्षः—

उन्हें अनुसूची में, गुलबर्गा विश्वविद्यालय से संबंधित प्रविदिट्यों के साथ एकमात्र स्तर 2 ग्राम 3 में विद्यमान प्रविदिट्यों के पश्चात् निम्नलिखित प्रविदिट्यों अंतः स्थापित करा जाएंगी, प्रत्यक्षः—

“मास्टर आंक मजरो (कर्ण, नासा, कंठ विज्ञान) एम.एम. (क.ना.क.वि.) और डिल्लीमा इन लैटिकोलॉजी एंड मोटोलॉजी-डी.एस.जी.”।

[संख्या वा-11015/26/89-एम ई (पी)]
प्रार. श्रीनिवासन, अवर सचिव

New Delhi, the 21st December 1989

S.O. 158.—In exercise of the powers conferred by sub-section (2) of section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule against the entries relating to the Gulbarga University in the columns two and three respectively, after the existing entries, the following entries shall be inserted, namely :—

“Master of Surgery (E.N.T.) and M.S. (E.N.T.) Diploma in Laryngology & Otology D.L.C.”

[No. V-11015/26/89-ME(P)]
R. SRINIVASAN, Under Secy.

थ्रम मंत्रालय

नई दिल्ली, 22 दिसंबर, 1989

का.आ. 159.—श्रीयोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसार में केन्द्रीय सरकार विश्वायापटनम पार्ट ट्रस्ट के प्रबंधन के सम्बद्ध नियोजकों और उनके कर्मकारों के भीच अनुबंध में विविदिष्ट श्रीयोगिक विवाद में श्रीयोगिक अधिकारण ईश्वरावाद के पचपट को प्रकाशित करती है जो केन्द्रीय सरकार की 21-12-89 को प्राप्त हुमा था।

MINISTRY OF LABOUR

New Delhi, the 22nd December, 1989

S.O. 159.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Visakhapatnam Port Trust and their workmen, which was received by the Central Government on 21-12-89.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri C. Rami Reddy, B.Sc., B.L., Industrial Tribunal.
Dated, 25th November, 1989
Industrial Dispute No. 9 of 1988

BETWEEN :

The Workmen of Visakhapatnam Port Trust,
Visakhapatnam. (A.P.).

AND

The Management of Visakhapatnam Port Trust,
Visakhapatnam. A.P.,

APPEARANCES :

Sri K. Balakrishna, Senior Laboratory Assistant of Medical Department, Visakhapatnam Port Trust, Visakhapatnam for the Workman.

S|Sri K. Srinivasa Murthy, G. Sudha and A. Visalakshi Advocates for the Management.

AWARD

The Government of India, Ministry of Labour by its Order No. L-34012/12/87-D.IV(A) dated 6-1-1988 referred the following dispute under Section 10(1)(d) & (2A) of the Industrial Disputes Act, 1947 between the employer in relation to the Management of Visakhapatnam Port Trust and their workmen to this Tribunal for adjudication :

“whether the action of the management of Visakhapatnam Port Trust in removing from service w.e.f. 10-01-1985 Sri Uppili Apparao, Firemen Grade-II Marine Department, is justified ? If not, to what relief the workman is entitled to ?”.

This reference was registered as Industrial Dispute No. 9 of 1988 and notices were issued to both parties.

2. The facts of the case are as follows.—Uppili Apparao S/o late AppalaSwamy is an ex-employee of the Visakhapatnam Port Trust. He claims that he was a student of Port High School and that he studied upto 7th Class in that institution from 1964 to 1971. A copy of the Transfer Certificate is Annexure I. As he did not qualify for promotion in 1971, his father, who was an employee of the Port Trust, sought employment for him. He was selected as C. L. Mazdoor in the Chief Engineer's Department of the Visakhapatnam Port Trust. For appointment as C. L. Mazdoor, the qualification is only literacy. As Apparao was a literate, he was appointed as C. L. Mazdoor. In the year 1973 he appeared for the Swimming Test and then got selected as Firemen Grade II. He was appointed as Fireman Grade II w.e.f. 26-7-1974. The petitioner is not aware, what are the required qualifications for the post of Fireman Grade II. He has complied with the physical fitness and also passed the swimming test. On the basis of his efficient performance and service, he was promoted as Fireman Grade I. There were no adverse remarks against him at any time. While he was working as Fireman Grade I the Port Trust issued a charge memo dated 3-1-1983 alleging that he produced a false certificate regarding educational qualification at the time of his selection as C. L. mazdoor. It is alleged that on the basis of false education certificate he got selected. In fact literacy is the only qualification for C. L. mazdoor. There was no need for producing a false certificate as the petitioner is a literate. An enquiry was instituted, Sri U. Thathaiul, Labour Officer conducted the enquiry. The enquiry was not conducted in accordance with the principles of natural justice. The Departmental enquiry conducted is a farce. Several material documents were not produced and some connected papers were destroyed. A lot of factual information was suppressed and was not made available. The Enquiry Officer acted as if he is the prosecutor and he did not function as an impartial enquiry officer. He conducted the enquiry in violation of Visakhapatnam Port Employees (Classification, Control & Appeal) Regulations. In particular, there was a flagrant breach of violation of Regulation 10, (15) and (16). The finding arrived at in the enquiry is illegal and liable to be set aside. When an appeal was filed to the Chairman pointing out the various defects, the Appellate Authority did not apply his mind to the facts of the case and disposed off the appeal in one line order. A review petition was submitted to the Secretary, Ministry of Transport. The review was not granted on the ground that a review petition does not lie with the Central Government.

3. In the Marine Department in which the petitioner was working, several employees were found to have joined service with false certificates. This was brought to the notice of the Chairman, Port Trust and to the Government of India. They were alleged to continue in the lower grade post. In the present case, the petitioner was dismissed. This itself amounts discrimination. The petitioner came to know

that the qualifications required for Fireman Grade II were amended in the year 1974-75. When the proceedings were at the Appellate stage, the petitioner passed Third Form which is the required qualification. But his application was not considered. The Petitioner may be permitted to examine himself as a witness, Sri S. S. Naidu, Executive Engineer, Chief Engineer's Department and Head Master of the Port High School may be examined as defence witnesses. The petitioner may be permitted to avail the services of Sri K. Balakrishna, a co-worker to represent his case before the Court. The requisite authorisation is appended.

4. The counter filed by the Management reads as follows.—This Respondent denies the various allegations in the claim statement. The petitioner-workman is put to strict proof of the same. The dispute referred to the Tribunal is "Whether the action of the Management of the Visakhapatnam Port Trust in removing from service w.e.f. 10-1-1985, Uppili Apparaao, Fireman Grade II is justified?". With regard to the various allegations in paras 1 to 9, the Management has no knowledge. It is true that the petitioner's father was working as an employee in the Chief Engineer's Department of the Port Trust. The material facts have been stated in wrong perspective in the claim statement. In the normal course, Respondent engaged the petitioner as casual labour in Engineering Department in 1973. At that time he submitted Transfer Certificate No. 2462 Rc No. 40763 dated 12-8-71 issued by Mrs. A. V. N. College High School, Visakhapatnam. This certificate was produced by the petitioner to show that he was a literate. For appointment of casual mazdoor, the basic qualification is literacy only. There is no Class IV in casual mazdoor. There are no grades in casual labour. Later on he was selected and appointed as Fireman Grade II in the Marine Department. For his appointment as casual labourer as well as Fireman Grade II the Management relied upon the transfer certificate produced by the petitioner. He was asked to appear for swimming test and he was successful in that and was appointed as Fireman Grade II w.e.f. 26-7-1974. Later he was promoted as Fireman Grade I : Fireman Grade I is not a selection post and the promotion is given on the basis of seniority and availability of vacancy subject to Physical Fitness of the candidate. So far as educational qualifications are concerned, the petitioner is fully aware and his present allegation that he is not aware of the qualification required, is false.

5. The charge sheet dt. 3-1-1983 was issued as he produced a false certificate originally. He gave an explanation on 20-1-1983. Being not satisfied with it, a regular enquiry was ordered. The enquiry was conducted in accordance with the procedure laid down in Visakhapatnam Port Employees (Classification, Control and Appeal) Regulations 1968. This petitioner was given a full and fair opportunity to cross examine the witness and to defend his case. Balakrishnan, co-employee represented the delinquent. He fully participated in the enquiry upto 7-11-1984 and intimated the Enquiry Officer that he had two defence witnesses Sri S. S. Naidu, Executive Engineer and Sri Guruvulu, Headmaster of Port High School. In fact on one hearing date Sri S. S. Naidu was present as a defence witness. But the petitioner and his co-employee did not attend the enquiry. Subsequently the petitioner and the co-employee did not evince any interest and they remained absent. Then exparte enquiry was conducted. The allegation that some connected papers were destroyed and the factual information is suppressed, is not correct. The petitioner is making wild allegations though the enquiry was conducted in a free and fair manner and in a most impartial way. A reading of the domestic enquiry proceedings clearly indicates that the petitioner pre-planned and deliberately remained absent from a particular stage to say that he is not given a reasonable opportunity and that the procedure has been violated. All documents have been seen by the delinquent and his co-employee. The allegation that the Enquiry Officer did not mark some of the exhibits produced by the Management witnesses, is not correct. The objection raised by the defence counsel is untenable and is based on imaginary grounds. The Enquiry Officer conducted the proceedings in an impartial way as a quasi judicial officer. The four

witnesses were examined. The witnesses were examined and additional evidence and documents were marked. This is perfectly in accordance with regulations. The allegation that the enquiry was not conducted in accordance with Regulations 10, 15, 15A and B and 16A, is not correct.

6. In view of the various allegations made against the enquiry by the Petitioner, the Tribunal may be pleased to decide as a preliminary issue the validity of the domestic enquiry. If for any reason the Tribunal comes to the conclusion that the enquiry was not conducted in accordance with principles of natural justice, the Management may be permitted to prove the charges levelled against the petitioner by adducing evidence in the Tribunal.

7. The appellate authority applied his mind and after carefully considering the entire material on record, dismissed the appeal. The review petition lies with the Government only in case remedy of appeal has not been availed. In the present case as remedy an appeal was availed the review petition to the Government of India is not tenable and accordingly it was rejected. With regard to the allegation in para 15, it is submitted that proper care was exercised while imposing the punishment duly observing all rules and regulations as well as instructions of the Government. In the present case, the employees secured initial employment by producing a false school certificate. For the higher employment the same false school certificate was used. In the case of others mentioned by the petitioner they had necessary qualifications for initial appointment and for securing higher appointment they produced false educational certificate hence they were reduced to lower post and they were allowed to continue. The initial educational certificates produced by them were genuine, hence they were awarded lesser punishment. In the present case as the initial certificate produced by him is false, he is removed from service. His acquiring higher qualifications later does not cure the defect.

8. The record of enquiry clearly reveals that the enquiry was conducted in a free and fair manner giving adequate opportunity to the delinquent. The delinquent and his defence counsel deliberately remained absent after particular stage when they found that they were completely helpless against the overwhelming evidence. The enquiry was conducted in strict accordance with the Visakhapatnam Port Employees (Classification, Control and Appeal) Regulations. The petitioner is not entitled to any relief. The petition may be dismissed.

9. My learned predecessor took up the validity of the domestic enquiry as a preliminary issue.

10. The Management examined the Enquiry Officer Sri V. Tatayyalu as M.W1 and marked various documents as Exs. M1 to M18 in order to show that the domestic enquiry is not vitiated. The workman did not adduce any oral evidence except marking letter dt. 29-9-1983 as Ex. W1. After considering the evidence on record, my learned predecessor passed on order on 15-11-1988 on merits holding that the domestic enquiry has been conducted in strict accordance with V.P.T.(C.C.A.) Regulations and it was conducted following the principles of natural justice. The enquiry is perfectly valid and it is no way vitiated.

11. Now the point for consideration is whether the Management is justified in removing the workman Sri Uppili Appa Rao from service w.e.f. 10-1-1985?

12. Subsequent to the pronouncement of the order on the validity of the domestic enquiry the parties did not adduce oral evidence. However the workman marked photostat copy of the judgement dt. 20-12-1988 in C.C. No. 355/87 on the file of II Additional Munsif Magistrate, Vasakhapatnam as Ex. W2. Both the parties submitted their written arguments which form part of the records.

13. It is submitted on behalf of the workman that the findings of the Enquiry Officer are not supported by any evidence and that the said findings are opposed to the whole body of evidence. The Memorandum of charge sheet dt. 3-1-1983 issued to the workman is marked as Ex. M2. The

charge i, that the workman U. Appa Rao Fireman Grade II F.S. Section, Marine Department was appointed as C. I mazdoor in Engineering Department, V.P.T., in the year 1973 and he was selected and appointed as Fireman Grade II in Marine Department w.e.f. 26-7-1974, that at the time of C.L. selection in Engineering Department he has produced an educational qualification certificate (T.C.) bearing admission No. 2464 R. C. No. 40763 dt. 12-8-1971 to the effect that he passed 7th class in A.V.N. School, Visakhapatnam, that on verification it was found to be false. As seen from the charge sheet, the charge relates of the selection and appointment of C. L. Mazdoor of 1973. The selection proceedings of C.L. mazdoors have a vital bearing on charge and so the workman in his letter dt. 20-9-1983 marked as Ex. W1 requested the Enquiry Officer to make available the document relating to selection proceedings of C.L. mazdoor and that the Enquiry Officer did not make available the said documents. Thus it is pointed out that on account of the non-production of original document relating to selection of C.L. mazdoor, there is an infirmity in the case of the Management affecting the findings of the Enquiry Officer. I am not inclined to agree with the above submission or contention of the workman. It is true that the workman gave a letter dt. 29-9-1983 Ex. W1 during the enquiry before the Enquiry Officer to make available the original document relating to the selection of C.L. mazdoors. It is seen from the page 4 of the enquiry proceedings (Ex. M12) dated 20-10-1983 that the Enquiry Officer asked the presenting Officer whether the particulars asked by the workman in his letter dt. 29-9-1983 can be made available and the Presenting Officer informed the Enquiry Officer that the particulars of the workman were available in the T.C. Thus the Presenting Officer produced the true copy of the T.C. before the Enquiry Officer on 29-9-1983. Further it is seen from page 15 of the Enquiry Officer's proceedings Ex. M12 dt. 2-11-1983 that the Presiding Officer submitted a copy of the extract of Selection particulars as requested by the workman and that the defence assistant appearing for the workman wanted the original document and that the Presenting Officer agreed to submit the original document on the next sitting. The next sitting took place on 2-12-1983 as seen from page 6 of the enquiry proceedings and the Presenting Officer furnished the original document (typed) containing the statement of particulars of the candidates for the selection to the posts of C.L. mazdoors in which the name of U. Appa Rao (Workman) was found in Item No. 156. The defence Assistant appearing for the workman perused the typed copy and requested the Enquiry Officer to furnish the manuscript copy which was written by the concerned clerk at the time of furnishing particulars of qualification, age, percentage by the public servant at the time of C.L. selection. The Presenting Officer informed that the manuscript copy which was asked by the workman is not available and that the typed copy which was approved by the Selection Committee, was available and the same was furnished to the Enquiry Officer. The Enquiry Officer also stated in his evidence that since the manuscript copy was not available he could not give the same to the workman and he gave typed copies of the documents which the workman wanted and the name of the worker is found at S.No. 156 in the Selection proceedings which is Ex. M18. It may be relevant to note that the defence assistance representing the workman in the enquiry, requested the Enquiry Officer on 2-12-1983 to mark the Selection proceedings as exhibit in the enquiry proceedings and the same is evident from page 6 of the enquiry proceedings dt. 2-12-1983. In the circumstances I am not able to understand as to how the workman is prejudiced for the non-production of the original manuscript of the Selection proceedings. As already stated, the workman went through the typed copy of the Selection proceedings made available to him at the time of enquiry. The next submission made on behalf of the workman is that unless the original certificate is produced, no interview or Selection can be made, that the original T.C. said to have been produced by the workman at the time of Selection of C.L. mazdoor has not been produced during the enquiry, that a copy of the true copy of the said certificate was brought in, that without the original documents no action should be taken. It is seen from page 3 of the enquiry proceeding of 20-10-1983 that the Presenting Officer represented to the Enquiry Officer, that a true copy of T.C., containing admission number 2462 and Serial Number 40763 furnished by the public servant at the time of selection is only available and the same is produced

for perusal. The Enquiry Officer marked the T.C. as an exhibit in the enquiry. The said true copy is also marked as Ex. M15 in these proceedings. As seen from the Selection proceedings of C.L. mazdoor marked as Ex. M18 the Selection Proceedings took place on 11-6-1973 and 23-7-1973 and the particulars relating to the workman are found at S. No. 156 of the enquiry proceedings. All the particulars of the workman are also mentioned in Ex. M18. It is stated therein that the name of the workman is U. Appa Rao that he is the son-in-law of Sri J. Veeranna Ex. Fitter, that he passed 8th Class and that the date of birth is 1-4-1954. In the true copy of the T.C. (Ex. M15), the name of the pupil is stated as U. Appa Rao and the date of birth is given as 1-4-1954 and the qualification is given qualified for promotion to 9th Class, meaning thereby that he had passed 8th Class. The particulars relating to the name, educational qualification and date of birth given in the true copy of the T.C. Ex. M15, tally with the particulars given in Ex. M8 which relate to the Selection of U. Appa Rao (Workman to the post of C.L. mazdoor held on 11-6-1973 and 23-7-1973. Ex. M15 was produced by the Presenting Officer before the Enquiry Officer on 20-10-1983 stating that the workman in question produced the said T.C. at the time of Selection. In my view the workman must have produced Ex. M15 at the time of selection for C.L. mazdoor, if not the particulars given in Ex. M15 would not have been found in the Selection proceedings relating to the workman marked as Ex. M18. Ex. M16 is an attestation form given by the workman before the appointment to the post of Fireman II in the Marine Department. One Surya Rao D. C. Department gave evidence in the enquiry on behalf of the Management. He was examined by the management before the Enquiry Officer on 9-8-1984. It is no doubt true that the workman did not participate in the enquiry on 9-8-1984 whatever it may be, Sri Surya Rao admitted that the photo found on the Attestation Form is that of U. Appa Rao (workman). Even otherwise the workman did not dispute the genuineness of Ex. M16. Thus Ex. M16 is admittedly the Attestation Form submitted by the workman before the offer of appointment to the post of Fireman Grade II in the Marine Department and it is dated 12-2-1975. The Education qualification showing the place of education with years and school and colleges are given in column 10 of Ex. M16. Name of the school is mentioned as A.V.N. College, Visakhapatnam. The date of entering is mentioned as the year 1965. The date of leaving is mentioned as 30-4-1968. The examination passed, is mentioned as passed Third Form (8th Class). The particulars given in the T.C. (Ex. M15) with regard to the name of the school, date of leaving the examination and the educational qualification, tally with the particulars given in the Attestation Form (Ex. M16) given by the workmen. Ex. M17 is the true copy of application form dated 29-3-1974 submitted by the workman through proper-channel to the Deputy Conservative Port Trust, Visakhapatnam for the recruitment to the post of Fireman Grade II in Fire Service-Marine Department. The particulars given in application (Ex. M17) relating to the date of birth and educational qualification tally with the particulars given in the T.C. (Ex. M15). All these circumstances clearly go to show that the true copy of T.C. (Ex. M15) was submitted by the workman at the time of Selection of C.L. mazdoor. It is not doubt true that the original T.C. is not produced by the Management. One can take a judicial notice of the fact that the originals are not retained by the employer after selection or appointment. The Normal practice is that the applicant submits true copies of the documents along with the application and the selection authority verifies the true copies of the documents submitted by the applicant with the originals produced by the applicant and that thereafter the selection takes place on being satisfied with the correctness of the copies of the documents furnished by the applicant. Thus the copies of the documents alone are retained in the office subsequent to the selection and the originals will always be with the applicant.

In the present case the originals must have been with the workman but not with the management. In the circumstances the submission of original T.C. by the Management during the enquiry does not arise at all. It is seen that the workman produced zerox copy of T.C. as Annexure-I to the claim statement. It is shown that the workman was born on 1-4-54, that he studied in Port Trust Primary School, Visakhapatnam that he was admitted in the said school in IV Class on 1-7-1964 that he left the school on 31-7-1971 that he was

studying 7th Class at the time of leaving the school and that the said certificate is dated 13-10-1971. Except the date of birth, the other particulars relating to qualification, date of leaving the school given in the T.C. enclosed as Annexure I to the claim statement, do not tally with the particulars mentioned in the Selection proceedings Ex. M18, Attestation Form Ex. M16 and the application form Ex. M17. Thus that the T.C. enclosed to the claim statement cannot be a certificate that could have been submitted by the workman at the time of selection of C.L. mazdoor. From the above, it is clear that the workman did produce the transfer certificate bearing admission No. 2462 and T.C. No. 40763 dt. 12-8-1971 at the time of Selection of C.L. mazdoor in the engineering Department.

14. The next aspect to be considered is whether the said certificate is false as contended by the management. The workman is disowning the T.C. bearing admission No. 2462 and T.C. No. 40763 dt. 12-8-1971 as is seen from another T.C. filed by the workman along with the claim statement as Annexure I. Thus it is the case of the workman that the said T.C. 40763, dated 12-8-1971, does not relate to him. There is also evidence to show that the said T.C. bearing Number 40763 dated 12-8-1971 (Ex. M15) does not relate to the workman in question. It is seen in the enquiry proceedings that a complaint dt. 1-9-1982 purported to have been sent by R. Vijaya Kumar against the workman was received in the office of the Vigilance Office, Port Trust, Visakhapatnam and a copy of the said complaint was also marked to C.B.I. for necessary action. It is seen that C.B.I. Office entrusted the said complaint to one Sri Kumaran working as Sub. Inspector of Police, C.B.I. Visakhapatnam for verification of the complaint. It is also seen that the Sub-Inspector of Police went to V.P.T. and obtained the relevant particulars of the T.C. in question, that he went to Sri A.V.N. High School and gave a requisition to the Head of the Institute requesting him to issue a certificate whether one T.C. bearing admission No. 2462, T.C. No. 40763 dt. 12-8-1971 issued to one U. Appa Rao are not and that the Principal issued a certificate to the effect that the said T.C. is not issued to Sri U. Appa Rao but was issued to somebody else. The certificate issued by the Principal is also marked as exhibit in the enquiry. The above facts are spoken to by Sri M. K. Kumaran, S.I. of Police as Management witness during the enquiry. Further he stated that he submitted verification report to Superintendent of Police, C.B.I. to intimate the department to take such action as it deems fit, Ex. M14 is the certificate issued by the Head Master A.V.N. High School, Visakhapatnam dt. 8-11-82. It is stated in Ex. M14 that the T.C. particulars furnished on behalf of U. Appa Rao son of K. Appa did not tally with their records and hence T.C. has not been issued by the Institute and it deems to be a false document. The said Kumaran was also cross examined during the enquiry proceedings. In the light of Ex. M14, it has to be held that the T.C. bearing No. 40763 and admission No. 2462 dt. 12-8-1971 does not belong to the workman in question and that it is false document. So I am inclined to agree with the findings given by the Enquiry Officer proving the workman guilty of the charges framed against him. It is no doubt argued by the workman that the basic education qualification for the post of C.L. mazdoor is that one should be a literate and that the Enquiry Officer did not go into this aspect of the matter, that since the literacy is only the qualification for the post of C.L. Mazdoor there were no need for the workman in question to produce certificate showing that he has passed 8th Class. I find no merits in the said contention. Even to show that he is literate he must produce evidence; Hence there is nothing unusual on the part of the workman in producing T.C. at the time of selection for C.L. Mazdoor. It is no doubt true that the Enquiry Officer (M.W1) stated in the cross examination that in the enquiry it was not revealed as to what is the minimum educational qualification prescribed for recruitment in 1973 as C.L. mazdoor and that he did not try to find out to what is the prescribed qualification for the post in 1973. It may be stating that the basic qualification for the post of C.L. mazdoor was not one of the points in issue in the departmental enquiry. The charge is whether the workman produced T.C. in question and whether the said T.C. is false. Thus I find no infirmity in the enquiry in this regard.

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15. The last contention argued on behalf of the workman is that the workman was charge sheeted before the III Additional Munsif Magistrate in respect of the same charge in C.C. No. 355/1987 and the workman was acquitted by the learned Magistrate on 20-12-1988 that Ex. W2 is the zerox copy of the judgement dt. 20-12-1988 in C.C. No. 355/87 showing the acquittal of the workman that in the light of the findings of the Criminal Court in C.C. No. 355/87 it has to be necessarily to be held that the charge framed against the accused did not stand at all and that the workman is entitled to reinstatement in the light of the findings given above. It may be useful to produce the reasoning given by the Learned Magistrate for the acquittal of the workman is found in para 9 which is as follows :

"The learned counsel for the accused argued that in view of Ex. P4 T.C. which is the copy of copy cannot carry any weight to the case of the prosecution in view of the law that laid down in Indian Evidence Act and it is the burden of the prosecution to prove that the accused produced the forged T.C. and in this case the prosecution miserably failed to produce the transfer certificate said to be alleged by the prosecution that the accused submitted the T.C. and as such the prosecution failed to prove the offence of forgery against the accused that he submitted the forged document and in consequence once the prosecution failed to prove the offence of forgery against the accused and the other offence alleged against the accused using the Transfer Certificate who is a forged document as genuine and cheating the port trust and drawn salary are automatically fails in view of the prosecution failed to prove the offence of forgery by it against the accused. In view of Ex. P4 transfer certificate which is a copy of the copy of the T.C. that is marked on behalf of the prosecution and no explanation about the actual T.C. said to be submitted by the accused I am inclined to agree with the arguments submitted by the learned counsel for the accused that the prosecution failed to prove the offence of forgery against the accused and in consequence the other offences that is alleged against the accused using the transfer certificate as that it is the forged document and thereby secured the job and drawn salary from the port trust by cheating it and as such the prosecution failed to prove the offence of forgery that the two other offences attributed against the accused using the Transfer Certificate knowingly false and used it as genuine and by production of the Transfer Certificate and he secured the job and drawn salary from the Port Trust as the prosecution failed to prove the offence of forgery and in consequence that the prosecution automatically fails to prove the other two offences as mentioned supra as alleged by the prosecution."

As seen from the above, the workman was acquitted for the reasons that forgery cannot be made out against the accused on account of the non-production of the original T.C. by the prosecution. The forgery is not in the charges issued to the workman. The question is whether the accused produced the false T.C. which is marked as Ex. M15 and the findings is that he did produced false T.C. In my view the findings given in the Criminal Court cannot have any bearing in order to find whether the T.C. produced by the workman was false or not. It may be stated that the enquiry officer submitted the enquiry report (Ex. M13) dt 20-9-1984, holding the workman guilty of the charges and that the Disciplinary Authority in his proceedings dt. 10-1-1985 accepted the findings of the Enquiry Officer and passed the order of removal of the workman from service. The Appellant Authority confirmed the order of removal in its proceedings dt. 9-7-1985. Thus that the order of removal was passed long prior to the acquittal of the workman in C.C. No. 355/87 for the offence of forgery in respect of the same T.C. which is the subject matter of the charge before the Enquiry Officer. It may be useful to refer to the decision of the Madras High Court reported in 1970 (I L.J. page 481 (ANGLO AMERICAN DIRECT TFA TRADING CO. v. LABOUR COURT, COIMBATORE). It is held as follows :

"If a domestic Tribunal has concluded its enquiry and come to a conclusion even before the criminal court has passed the judgement, the domestic Tribunal's conclusion is not vitiated by the fact that, on the same facts, the criminal court has subsequently acquitted the worker either on a technical ground or on merits. Similarly, if after a conviction by the criminal court, there is a finding of the domestic Tribunal holding the employee guilty on evidence which is independently assessed by it, the fact that subsequently on appeal the worker was acquitted does not mean that the domestic Tribunal's conclusion is any way vitiated."

In the present case also domestic Tribunal has concluded its enquiry and came to a conclusion even before the Criminal Court passed the judgement. Further it is seen that the Criminal Court acquitted the accused on the charge of forgery. As already submitted the charge in the present case is whether the T.C. produced by the workman is false or not. Thus forgery is not an issue in the charge framed against the workman. Relying on the above decision I am inclined to find that the decision given in the Criminal Court case does not affect the findings of the Enquiry Officer nor the findings given by this Tribunal. The workman no doubt referred to various decisions in the written arguments. Since the said decisions have no bearing on the issue in question they are not referred to in the discussion. Having regard to the nature of the charge, I am of the view that the discussed of the workman is proper punishment.

16. Having regard to the above, I find that the action of the Management of Visakhapatnam Port Trust in removing from service w.e.f. 10-01-1985 Sri Uppili Apparao, Fifeman Gr. II, Marine Department is justified and he is not entitled to any relief.

Award is passed accordingly.

C. RAMI REDDY, Presiding Officer
[No. L-34012/12/87-D.IV(A)]

Appendix of Evidence

**Witnesses Examined
for the Management :**
M.W1 U. Tatayyalu.

**Witnesses Examined
for the Workmen :**
NIL

Documents marked for the Management :

- Ex. M1 Order dt. 8-2-83 of the Deputy conservator, Visakhapatnam Port-Trust, Visakhapatnam appointing U. Thathayyalu as Enquiry Officer to conduct enquiry against U. Appa Rao.
- Ex. M2 Memorandum of charge sheet dt. 3-1-83 issued by the Disciplinary authority to U. Appa Rao.
- Ex. M3 Explanation dt. 20-1-83 to the charge sheet submitted to the Dy. Conservator, Visakhapatnam Port Trust by U. Appa Rao.
- Ex. M4 Enquiry Notice dt. 14-7-83 issued by inquiry Officer to U. Appa Rao.
- Ex. M5 Enquiry Notice dt. 27-7-83 issued by inquiry officer to U. Appa Rao.
- Ex. M6 Enquiry notice dt. 24-9-83 issued by Enquiry Officer to U. Appa Rao.
- Ex. M7 Enquiry Notice dt. 28-11-83 issued by inquiry officer to U. Appa Rao.
- Ex. M8 Enquiry Notice dt. 3-12-83 issued by inquiry officer to U. Appa Rao.
- Ex. M9 Enquiry Notice dt. 19-6-84 issued by Inquiry officer to U. Appa Rao.
- Ex. M10 Enquiry notice dt. 26-6-84 issued by Inquiry Officer to U. Appa Rao.
- Ex. M11 Enquiry Notice dt. 13-7-84 issued by Inquiry Officer to U. Appa Rao.
- Ex. M12 Enquiry Proceedings.
- Ex. M13 Enquiry Report.
- Ex. M14 Letter No. NIL dt. 8-11-82 of the Head Master Mrs. A. V. N. College High School.

- Ex. M15 True Copy of the Form of Transfer Certificate of U. Appa Rao.
- Ex. M16 Attestation form submitted by U. Appa Rao before offer of appointment to the post of fireman Gr. II.
- Ex. M17 Copy of the application of U. Appa Rao for the post of fireman Gr. II.
- Ex. M18 True copy of the extract from the Statement of particulars in respect of U. Appa Rao for the selection to the post of C. L. Mazdoor held on 11-6-73 and 23-7-73.

Documents marked for the Workmen :

- Ex. W1 Photostat copy of the request letter dt. 29-9-83 addressed by K. Balakrishna to inquiry officer for additional document.
- Ex. W2 Photostat copy of the Judgement dt. 20-12-88 in C.C. No. 355/87 on the file of the IIIrd Additional Munsif Magistrate, Visakhapatnam.

C. RAMI REDDY, Presiding Officer

नई विल्ली, 2 जनवरी, 1990

का. अ. 160 :—श्रीबोगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के प्रत्यय में कंगड़ीप सरायार एनीप्राक ट्रैफिक कॉम्पानीटिव कैल्टीन आफ सेल्स ट्रेनीप्राक आफिम, कटक के प्रबंधनतंत्र के सम्बन्ध तियोगकर्तों और उनके कर्मकारों के बीच प्रत्यय में विनिविट श्रीबोगिक विवाद में श्रीबोगिक मध्यिकारा भूवनेश्वर के प्रबंधन का प्रकाशित करनी है जो कंगड़ीप सरायार को 21-12-89 को प्राप्त हुआ था।

New Delhi, the 2nd January, 1990

S.O. 160.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby makes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of T.T.C. Canteen of Central Telegraph Office, Cuttack and their workmen, which was received by the Central Government on 20-12-89.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR,
CAMP AT CUTTACK

Industrial Dispute Case No. 20 of 1988 (Central)

Dated, Bhubaneswar, the 12th December, 1989

PRESENT :

Shri S. K. Misra, LL.B., Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar.

BETWEEN

The Management of the Telegraph Traffic Co-operative Canteen of Central Telegraph Office, Cuttack—First Party-Management.

AND

Their workman, namely, Sri Purna Chandra Sil, C/o. Loknath Prasad Kamila, At/P.O. Mingdeba, Dist. Cuttack —Second Party-workman.

APPEARANCES :

None

--For both the parties.

AWARD

The Government of India in the Ministry of Labour, in exercise of the powers conferred upon them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) and by their Order No. L-40012/36/86 D.III (B), dated 15th July, 1988 have referred the following dispute for adjudication by this Tribunal :—

"Whether the action of the Secretary, Telegraph Traffic Co-operative Canteen of Central Telegraph Office, Cuttack in refusing the employment to Shri Purna

Chandra Sil, Canteen Mistry w.e.f. 14-9-84 and subsequently closing the Canteen from 12-9-86 is justified? If not, to what relief the workman is entitled?"

2. This case was posted to to-day for hearing. Both parties are found absent inspite of repeated calls. The second party-workman has not taken any steps despite registered notice served on him. The first Party-Management has also not taken any steps today. In view of the non-appearance of both the parties in the Tribunal, it can safely be inferred that at present no dispute subsists between the parties. Hence, a no dispute Award is passed, so far as this reference is concerned.

S. K. MISRA, Presiding Officer
[No. L-40012/36/86-D.II (B)]

का. आ. 161.—श्रीद्वारिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के मन्त्रभरण में केन्द्रीय सरकार डांडाकरणा प्रोजेक्ट कोरपुट के प्रयोगस्वरूप के मम्बह नियोजकों और उनके कर्मकारों के द्वारा अनुबंध में निस्टिट श्रीद्वारिक विवाद में श्रीद्वारिक अधिकरण भवनेश्वर के पंचायत कर्ता हैं जो केन्द्रीय भवकार को 21-12-89 को प्राप्त हुआ गा।

S.O. 161.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Industrial Tribunal, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Dandakaranya Project, Koraput and their workmen, which was received by the Central Government on 21-12-89.

ANNEXURE

INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR
Industrial Dispute Case No. 13 of 1988 (Central)
Bhubaneswar, the 29th November, 1989

PRESENT :

Shri S. K. Misra, LL.B. Presiding Officer, Industrial Tribunal, Orissa, Bhubaneswar.

BETWEEN

The Management of Dandakaranya Project, Koraput –
First Party-Management.

AND

Their workmen represented through the Rehabilitation Employees' Union —Second Party-workman

APPEARANCES :

Dr. K. S. Rao, Zonal Administrator, Dandakaranya Project For the First Party-management.

Shri B. B. Das, President, Rehabilitation Employees Union For the Second Party-workman.

AWARD

The Government of India in the Ministry of Labour, in exercise of the powers conferred upon them by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. L-42025/1/88-D.II(B) dated 23-3-1988 for adjudication by this Tribunal :—

"Whether the following demands raised by Rehabilitation Employees' Union on the management of Dandakaranya Project, Koraput are justified? If yes, to what relief the concerned workmen are entitled to and from what date?"

Demands :

- (1) Regularisation of all muster roll workers who have been working from 1958 onwards after completion of 240 days with all consequential benefits of such regularisation.
- (2) Reinstatement of all such muster roll workers with all back wages who were retrenched/removed after

issue of stay order by the Hon'ble Supreme Court dated 24-1-83 on retrenchment.

- (3) Stoppage of retrenchment of all workers of Dandakaranya Project and absorption of all muster roll workers after their regularisation in other Central Government organisation through Central Government Surplus Cell as is done in case of regular employees of Dandakaranya Project.
- (4) Grant of permanancy from 1972 and grant of retirement from 1976 to Shri B. B. Das, Former Branch Secretary of Class III and Class IV Employees Association and former General Secretary and presently President of Rehabilitation Employees Union by accepting his letter dated 21-2-76 withdrawing the conditional resignation.
- (5) Waiving of Rupees Seventeen thousands charged claimed from Sri B. B. Das as penal rent for Dandakaranya Project Quarter No. E-6 at Koraput in which the Offices of Class III and Class IV Employees Association and Rehabilitation Employees Union were housed.
- (6) Grant of Project Allowance to former workcharged employees from 1-8-85 instead of 1-10-63.
- (7) Giving Revised pay Scale to formerly workcharged employees from 1-7-59 instead of 1-1-68.
- (8) Regularisation of workcharged employees from 12-8-60.
- (9) Stoppage of the closure of the Dandakaranya project and handing over of its assets etc. to the State Government of Orissa and Madhya Pradesh without any dialogue with the representatives of workers' Union and providing representation of workers' Union in matters where decisions are taken about the closure and handing of Dandakaranya Project vis-a-vis absorption/retrenchment of workers.
- (10) Complete representation of Rehabilitation Employees Union in Regional and Departmental Councils of JCM and recognition of Rehabilitation Employees Union.
- (11) Benefit of Provident Fund to workcharged and muster roll employees.
- (12) Reinstatement with back wages of Sri P. K. Swain, former Joint Secretary and Secretary of Rehabilitation Employees Union.
- (13) Reinstatement in service of Sukuru, Jai Das, Ram Bisro Soma Suren workcharged Khalasis retrenched illegally.
- (14) Reinstatement of 32 workmen retrenched in 1965.
- (15) Reinstatement of Ananda Badhai, Ex-Security Guard who was terminated from service from 1-12-68.
- (16) Reinstatement of A. K. Parida and 25 other workmen retrenched in 1975.
- (17) Withdrawal of superannuation orders in respect of D. N. Patnaik, Work Assistant.
- (18) Regularisation of pay scale of B. C. Joshi and 10 other tractor drivers of Dandakaranya Project.

2. At the hearing of the proceeding the Rehabilitation Employees' Union representing the second party-workmen gave up the demand in item No. 18 of the reference and accordingly it was dropped by order dated 19-7-88. The said Union also gave up the demands in item Nos. 2, 6, 7, 8, 9, 10, 11 and 15 and accordingly an order was passed on 21-3-89 excluding the said demands from consideration but subsequently at the instance of the Union the demand in Item No. 2 was revived and was included for consideration in this proceeding.

Thus, the following demands remained for consideration in the present proceeding :—

- (1) Regularisation of all muster roll workers who have been working from 1958 onwards after completion of 240 days with all consequential benefits of such regularisation.
- (2) Reinstatement of all such muster roll workers with all back wages who were retrenched/removed after

issue of stay order by the Hon'ble Supreme Court dated 24-1-83 on retrenchment.

- (3) Stoppage of retrenchment of all workers of Dandakaranya Project and absorption of all muster roll workers after their regularisation in other Central Government organisation through Central Government Surplus Cell as is done in case of regular employees of Dandakaranya Project.
- (4) Grant of permanency from 1972 and grant of retirement from 1976 to Shri B. B. Das, former Branch Secretary of Class III and Class IV employees Association and former General Secretary and presently President of Rehabilitation Employees Union by accepting his letter dated 21-2-76 withdrawing the conditional resignation.
- (5) Waiving of Rupees Seventeen thousands charged claimed from Sri B. B. Das as penal rent for Dandakaranya Project Quarter No. E-6 at Koraput in which the offices of Class III and Class IV Employees Association and Rehabilitation Employees Union were housed.
- (6) Reinstatement with back wages of Sri P. K. Swain former Joint Secretary and Secretary of Rehabilitation Employees Union.
- (7) Reinstatement in service of Sukuru, Jai Das, Ram Biro, Soma Suren workcharged Khalasis retrenched illegally.
- (8) Reinstatement of 32 workmen retrenched in 1965.
- (9) Reinstatement of A. K. Parida and 25 other workmen retrenched in 1975.
- (10) Withdrawal of superannuation orders in respect of D. N. Pattnaik, Work Assistant.

3. Besides the above demands which require adjudication in this proceeding, as directed by the Hon'ble Supreme Court of India in their order dated 23-2-89 passed in Civil Mis. Case No. 612 of 1989 the question of jurisdiction of this Tribunal to adjudicate upon the dispute referred to it for adjudication is to be decided.

4. Before entering into a discussion of the questions relating to the several demands of the workmen which have been referred for adjudication, I would first determine the question of maintainability of the reference and the jurisdiction of this Tribunal to entertain the same.

The Management of Dandakaranya Project has questioned the maintainability of the reference and the jurisdiction of this Tribunal to entertain the same mainly on the following two grounds.

The first ground is that the Dandakaranya Project is not an 'Industry' within the meaning of the Industrial Disputes Act, 1947 and therefore, the reference in respect of the Project and its employees is bad in law. The second ground is that the Government of India which has made the present reference is not the appropriate Government within the meaning of the Industrial Disputes Act, 1947 so as to be competent to make the reference.

5. So far as the question as to whether the Dandakaranya Project is an 'industry' or not within the meaning of the Industrial Disputes Act, 1947 besides advancing extensive arguments, the parties have also relied upon a large number of decisions but I do not propose to deal with all the decisions cited in this regard except the one in the case of Bangalore Water Supply and Sewerage Board, Appellant V. A. Rajappa and others, Respondents, reported in 1978 Lab. I.C. 467 which has answered all the points argued by both parties on the question.

While considering the meaning of the expression 'industry' as used in the Industrial Disputes Act, their Lordships of the Supreme Court considered the entire statute itself and in doing so adopted the principle that the statute must be interpreted in the context of all the provisions within it, its objects, preamble and the functions of various provisions. They observed—"It may not be strictly a dictionary meaning in such cases. Indeed, even in a modern statute the meaning of a

term such as 'industry' may change with the rapid change of social and economic structure". Beg J. (Hon'ble Chief Justice) while dealing with the matter referred to the sovereign functions which have been placed outside the field of industry. His Lordship observed—"I do not feel happy about the use of the term "sovereign" here. I think that the term "sovereign" should be reserved, technically and more correctly, for the sphere of ultimate decisions. Sovereignty operates on a sovereign plane of its own as I suggested in Keshavamanda Bharati's case, A.I.R. 1973 S.C. 1461, supported by a quotation from Ernest Barker's "Social and Political Theory". Again, the term "Regal", from which the term "sovereign" functions appears to be derived, seems to be a misfit in a Republic where the citizen shares the political sovereignty in which he has even a legal share, however, small, in as much as he exercises the right to vote. What is meant by the use of the term "sovereign", in relation to the activities of the State, is more accurately brought out by using the term "governmental" functions although there are difficulties here also in as much as the Government has entered largely in fields of industry. Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication."

His Lordship (Beg C.J.) seems to have been impressed by the argument that some public utility services which are carried out by governmental agencies or corporation are treated by the Act itself as within the sphere of industry. If express rules under other enactments govern the relationship between the State as an employer and its servants as employees it may be contended, on the strength of such provisions, that a particular set of employees are outside the scope of the Industrial Disputes Act for that reason. His Lordship, it seems while indorsing the opinion and conclusion of Bhagwati, Krishna Iyer and Desai, JJ., also observed that it would not be correct to artificially exclude State run industries from the sphere of the Act, unless statutory provisions, expressly or by a necessary implication have that effect.

Delivering the judgment for himself and Bhagwati and Desai, JJ, Krishna Iyer, J. has attempted to and has given interpretation of the expression 'industry' within the meaning of Industrial Disputes Act, 1947. In paragraph 46, their lordships have raised the questions arising out of the competing contentions advanced before them which required answers for properly understanding the meaning and purport of the term 'industry' as used in the Industrial Disputes Act. Those are:—

- J. (a) Are establishments, run without profit motive, industries ?
- (b) Are Charitable institutions industries ?
- (c) Do undertaking governed by a no-profit-no-loss rule, statutorily or otherwise fastened, fall within the definition in S. 2(j) ?
- (d) Do clubs or other organisations (like Y.M.C.A.) whose general emphasis is not on profit-making but fellowship and self-service, fit into the definitional circle ?
- (e) To go to the core of the matter, is it an inalienable ingredient of 'industry' that it should be pried with a commercial object ?
2. (a) Should co-operation between employer and employee be direct in so far as it relates to the basic service or essential manufacture which is the output of the undertaking ?
- (b) Could a Lawyer's chambers or chartered accountant's office, a doctor's clinic or other liberal profession's occupation or calling be designated an industry ?
- (c) Would a University or college or school or research institute be called an industry ?
3. (a) Is the inclusive part of the definition in S. 2(i) relevant to the determination of an industry ? If so, what impact does it make on the categories ?
- (b) Do domestic service drudges who slave without respite—become 'industries' by this extended sense ?

4. Are governmental functions, strictly speaking, industrial and if not, what is the extent of the immunity of instrumentalities of Government?
5. What rational criterion exists for a cut-back on the dynamic potential and semantic sweep of the definition, implicit in the industrial law of a progressive society geared to greater industrialisation and consequent concern for regulating relations and investigating disputes between employers and employees as industrial processes and relations become more complex and sophisticated and workmen become more right-conscious?
6. As the provision now stands, is it scientific to define 'industry' based on the nature—the dominant nature—of the activity i.e. on the terms of the work, remuneration and conditions of service which bond the two wings together into an employer-employee complex?

Having posed the questions and having considered several decisions on different aspects in paragraph 87 their Lordships referred to and quoted the decision of Subba Rao, J. in A.I.R. 1960 S.C. 675 at page 684 where the result of the discussion had been summarized in the following manner:—

- "(1) The definition of 'industry' in the Act is very comprehensive. It is in two parts; one part defines it from the standpoint of the employer and other from the standpoint of the employee. If an activity falls under either part of the definition, it will be an industry within the meaning of the Act.
- (2) The history of industrial disputes and the legislation recognizes the basic concept that the activity shall be an organized one and not that which pertains to private or personal employment,
- (3) The regal functions described as primary and inalienable functions of State though statutorily delegated to a corporation are necessarily excluded from the purview of the definition. Such regal functions shall be confined to legislative power, administration of law and judicial power.
- (4) If a service rendered by an individual or private person would be an industry, it would equally be an industry in the hands of a Corporation.
- (5) If a service rendered by a corporation is an industry, the employees in the departments connected with that service, whether financial, administrative or executive, would be entitled to the benefits of the Act.
- (6) If a department of a municipality discharged many functions, some pertaining to industry as defined in the Act and other non-industrial activities, the predominant functions of the department shall be the criterian for the purpose of the Act."

After considering the pros and cons of the problem of interpreting the expression 'industry' as defined in Section 2(i) of the Industrial Disputes Act, their Lordships have categorised their views in paragraph 161 of the judgment in the following manner:—

'Industry', as defined in S. 2(j) and explained in Banerji (AIR 1953 SC 58) has a wide import

- (a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee (the direct and substantial element is commercial), (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making on a large scale prasad or food) prima facie, there is an 'industry' in that enterprise.
- (b) Absence of profit motive or gainful objective is irrelevant, be the venture in the public, joint, private or other sector.

- (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.
- (d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although Section 2(j) uses words of the widest amplitude in its two limbs, their meaning can not be magnified to overreach itself.

- (a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment; so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I (supra), although not trade or business, may still be 'industry' provided the nature of the activity viz., the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold 'industry' undertakings, callings and services, adventures 'analogous to the carrying on of trade or business.' All features, other than the methodology of carrying on the activity viz. in organizing the co-operation between employer and employee, may be dissimilar. It does not matter, if on the employment terms there is analogy.

III. Application of these guidelines should not stop short of their logical reach by invocation of creeds, cults or inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the being industrial peace, regulation and resolution of industrial disputes between employer and workmen, the range of this statutory ideology must inform the reach of the statutory definition. Nothing less, nothing more.

- (a) The consequences are (i) professions, (ii) Clubs (iii) educational institutions, (iv) co-operatives, (v) research institutes, (vi) charitable projects and (vii) other kindred adventures, if they fulfil the triple tests listed in I (supra), can not be exempted from the scope of Section 2(j).
- (b) A restricted category of professions, clubs, co-operatives and even gurukulas and little research labs, may qualify for exemption if, in simple ventures, substantially and, going by the dominant nature criterion, substantively, no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.
- (c) If, in a pious or altruistic mission many employ themselves, free or for small honoraria or like return, mainly drawn by sharing in the purpose or cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours in a free medical centre or ashramites working at the bidding of the holiness, divinity or like central personality, and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry even if stray servants, manual or technical, are hired. Such eleemosynary or like undertakings alone are exempt—not other generosity, compassion, developmental passion or project.

IV. The dominant nature test :

- (a) Where a complex of activities, some of which qualify for exemption, others not, involve employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case (AIR 1963 SC 1873) or some departments are not productive of goods and services if isolated, even then, the pre-dominant nature of the services and the integrated nature of the departments as explained in the case of Corporation of Nagpur (AIR 1960 SC 675) will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by status.

- (b) Notwithstanding the previous clauses, sovereign functions, strictly understood, (alone) qualify for exemption, not the welfare activities or economic adventures undertaken by government or statutory bodies.
- (c) Even if departments discharging sovereign functions, if there are units which are industries and they are substantially severable, then they can be considered to come within S. 2(j).
- (d) Constitutional and competently enacted legislative provisions may well remove from the scope of the Act categories which otherwise may be covered thereby.

V. We overrule Safdarjung (AIR 1970 SC 1407), Solicitors' case (AIR 1962 SC 1080), Gymkhana (AIR 1968 SC 554), Delhi University (AIR 1963 SC 1873) Dhanrajgirji Hospital (AIR 1975 SC 2032) and other rulings whose ratio runs counter to the principles enunciated above and Hospital Mazdoor Sabha (AIR 1960 SC 61*) is hereby rehabilitated."

c. The representative of the Union placed before me several evidence adduced in this case in support of his contention that Dandakaranya Project is an 'Industry' within the meaning of the Industrial Disputes Act, 1947. He referred to the different tests laid down in the aforesaid Supreme Court decisions and contended that the Project is covered by such tests and has got to be held to be an 'industry'.

He referred to the evidence on record and submitted that the activities undertaken by the Project are systematic. For this he relied upon the resolution Ext. C dated 12-9-1958 which provided a detailed scheme to resettle displaced persons from East Pakistan in Dandakaranya and for integrated development of the area with particular regard to the promotion of the interest of the areas' tribal population. For this purpose a Central Authority known as Dandakaranya Development Authority was set-up by the Government of India. The area was delineated as comprising of Bastar district of Madhya Pradesh and Koraput district of Orissa. Executive bodies were set out for the purpose of carrying on the aforesaid authorities. It was contended that the activities of the Project complied with the requirements of the functional tests as laid down in the aforesaid judgment of the Hon'ble Supreme Court in the Bangalore Water Supply case, in as much as, the Chief Administrator functioned as the Chief Executive of the Project. A hierarchy authority was created to look into the day-to-day functions of the project in accordance with the policy decision taken by the Government of India in its Rehabilitation Department. It was contended that the functions performed by the Chief Administrator of the project can equally be performed by a private individual.

Coming to the dominant nature test it was urged on behalf of the second party workman that the general scheme of the project was not only to rehabilitate the displaced persons but also to provide to them land for cultivation and work so as to enable them to earn their living. For the purpose of cultivation as per the scheme, Irrigation Projects were taken-up. For imparting necessary knowledge to the settlers, Schools were established. For providing health care, dispensaries and hospitals were established. Work shops were also established to give employment to the displaced persons and to train them to run such work shops. Communication facilities were provided and roads were laid down. All these were done not only to effectively settle the large number of displaced persons who were shifted to the project area but also with the object of making integrated development of the area keeping in view the tribal population of the area who never enjoyed any such facilities before. For the purpose of achieving the objects, the project was created which employed several thousands of technical, non-technical, work charged and muster roll categories of employees which included some displaced persons, on payment of wages. May be it was no profit motive in the adventure. May be it was executed as a national necessity but all the same the project which was systematically run by the Dandakaranya Develop-

ment Authority created by the Government of India did deliver goods/service to the people at large. There can be no denying of the fact, and in fact it is admitted in this proceeding that the project could be run and its object could be achieved by the co-operation between the employees who worked in the project and the employer, namely, the Dandakaranya Development Authority. The dominant nature test as explained in the decision of the Hon'ble Supreme Court of India in the case of Bangalore Water Supply also fits with the present case. The regular employees who worked in the project are said to be governed by the service conditions applicable to the Central Government servants but majority of the employees who were employed as labourers in laying down roads, digging canals, putting embankments, clearing forests, running machines etc. had the largest contribution in achieving the object for which the project was created. Considering these features which have been brought to light in the present proceeding, in my view, there can be no escape from the conclusion that the whole undertaking will be an 'industry' although those who are not 'workmen' by the definition of the Industrial Disputes Act may not benefit by the said Statute. It is argued on behalf of the Management that Dandakaranya Project is a department of the Government of India engaged in the work of rehabilitation of the displaced persons which no private individual or agency can take up and the project merely discharges the administrative functions of the Central Government and as such, the activities of the project should be to be 'regal' and 'sovereign' functions of the State. I do not think the aforesaid contention can be accepted in the case of this project in view of the decision of the Hon'ble Supreme Court of India in the case of Bangalore Water Supply referred to above.

7. The definition of 'Industry' within the meaning of the Industrial Disputes Act being as it is, has, as it seems created problems from time to time. The definition has come up for interpretation in Courts from time to time. In a recent decision of the Hon'ble Supreme Court of India in the case of Des Raj & Others Vs. State of Punjab and others reported in 1988 (57) F.L.R. 176, the concept of 'Industry' came up for consideration. In the said case the question as to whether the Mechanical Construction Division under the Irrigation Department and the P.W.D. Drainage Division of the Government of Punjab and Haryana are 'industry' or not came up for consideration. After referring to the definition of 'Industry' occurring in Section 2 of the Act and the earlier decisions of the Court, their Lordships of the Hon'ble Supreme Court of India in the aforesaid decision noticed the activities of the Irrigation Department of the State of Punjab and held that the Irrigation Department considered on the basis of the dominant nature test evolved by Krishna Iyer, J. clearly come within the ambit of 'Industry'.

In this decision (Des Raj v. State of Punjab) their Lordships noticed the judgements delivered by many other High Courts in which the Chambal Hydel Irrigation Project which was executed for generating electricity, as also, for irrigation purposes was held to be an 'industry'. The Public Health Engineering Department of the State of Bihar was also held to be an 'industry'. The Salandi Irrigation Project in the State of Orissa was also held to be an 'industry'.

Their Lordships in the aforesaid decision noticed Section 2(c) of the Amending Act(46 of 1982) by which the definition of 'industry' has been amended and observed that "Perhaps keeping in view the observation of the learned Judges constituting seven Judges Bench, the definition of 'industry' as occurring in Section 2(i) of the Act was amended by Act 45 of 1982. Though almost six years have elapsed since the amendment came on to the Statute Book, it has not been enforced yet. The Acts and commentaries on Industrial Disputes Act have, however brought in the definition by holding the old one with a note that the new provision has yet to come into force. This situation has further added to the confusion. Having observed this in the case of Desraj V. State of Punjab, their Lordships allowed the appeals but clarified that in the event of definition of 'industry' being changed either by enforcement of the new definition of 'industry' or by any other

legislative change, it would always be open to the aggrieved Irrigation Department to raise the issue again and the present decision would not stand in the way of such an attempt in view of the altered situation.

8. Thus, as the law stands at present, considering the objects and activities of the Dandakaranya Project there can not be any escape from the conclusion that it is an 'industry' as defined in Section 2(j) of the Industrial Disputes Act, 1947. Accordingly, I would hold that Dandakaranya Project is an 'industry'.

9. My aforesaid conclusion finds *prima facie* support from the fact that the Government of India, whatever might be the view expressed by the Rehabilitation Department and the Law and Labour Departments referred the disputes for adjudication by this Tribunal, in exercise of the powers conferred upon them by the Industrial Disputes Act.

10. The first party-management, as indicated earlier, has attacked the maintainability of this reference on the ground that the Government of India which has made the present reference is not the appropriate Government for making the reference and as such the reference is not maintainable.

It is submitted on behalf of the 1st party-management that the disputes referred for adjudication relate to the demands, made by the Rehabilitation Employees' Union on the management of Dandakaranya Project, Koraput and therefore, it is to be held that the disputes arose within the State of Orissa and the Government of Orissa is the appropriate Government to make the reference. On the other hand it is contended on behalf of the second party-workmen that the disputes referred related to the workmen of the Dandakaranya Project which is being executed under the authority of the Central Government and therefore the Central Government is the appropriate Government.

In this connection, my attention has been drawn to the decision reported in 1978 Lab. I.C. N.O.C. 179 (Calcutta) (Tea Board, Appellant Vrs. 1st Industrial Tribunal, West Bengal and others, Respondents) wherein it has been held that the Central Government though has control over the activities of the Tea Board but the Tea Board has been constituted under the Tea Act and derives its powers and duties under the Tea Act and the Rule and Regulation framed thereunder. In the circumstance, the industry carried on by the Tea Board is not by or under authority of the Central Government and therefore, the appropriate Government to refer the disputes between the Tea Board and its workmen is the State Government and not the Central Government. This decision, however, is distinguishable, in as much as, it relates to the Tea Board which is constituted under the State. The Dandakaranya Project was not constituted under any Statute. The other decision referred to is reported in 1980 Lab. I.C. 1191 (Vorod Rao, Petitioner Vrs. Presiding Officer, 1st Industrial Tribunal, Ahmedabad and others, O.Ps). This case relates to a dispute between the Blitz Publication Pvt. Ltd., located in the city of Bombay in the State of Maharashtra and its employees operating in the State of Gujarat. Question was whether the appropriate authority was the Government of Maharashtra or the Government of Gujarat. It was decided that in such case the test should be "where has the dispute substantially arisen; there must be nexus between the dispute and the Territory of the State". In the said case it was held that the dispute can be said to have substantially arisen both at Bombay as well as at Ahmedabad. To the same effect is the decision reported in 1973 Lab. I.C. 991. These decisions, however, do not seem to be very much relevant for deciding the issue before us. In the present case the Central Government has made the reference. Question is, is it the appropriate Government? It may be that the State Government of Orissa and the State Government of Madhya Pradesh are the appropriate Governments relating to the disputes referred for adjudication but it is to be seen if the Central Government which has made the reference is not the "appropriate Government" for making the reference so as to hold that the reference made by it is not maintainable.

11. The Dandakaranya Project was launched by the Government of India not under any Statute but by an administrative order. The Dandakaranya Development Authority was constituted to implement the project. The project covers the

district of Bastar in Madhya Pradesh and the district of Koraput in Orissa. The specific case of the first party-management in this proceeding is that the Dandakaranya Development Authority was implementing the project under the Control of the Central Government which was also financing it. The first party-management has categorically taken the stand that the Dandakaranya Project involves developmental activity of the Central Government. In this background we are to consider if the Central Government could be the appropriate Government for making the reference.

The expression "appropriate Government" has been defined in Section 2(a) of the Industrial Dispute Act, 1947 in the following manner—

In relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government the appropriate Government would be the Central Government and in relation to any other industrial dispute the appropriate Government is the concerned State Government.

Question is, whether the Dandakaranya Project which has been held by me to be an 'industry' is carried on by or under the authority of the Central Government.

The Dandakaranya Development Authority (For short—the D.D.A.), as I have already said is not a Statutory body created by any Statute. The D.D.A. was set-up by a resolution passed by the Government of India in the Ministry of Rehabilitation Dept. for effective and expeditious execution of the scheme to re-settle displaced persons from East Pakistan in Dandakaranya and for integrated development of this area with particular regard to the promotion of the interest of the areas tribal population. The Authority so set up has been mentioned in the resolution Ext. C. to be the Central Authority. In paragraph 6 of the resolution Ext. C it has been stated that the D.D.A. will function in accordance with such direction as it may, from time to time receive from the Central Government and further that the Ministry of Rehabilitation will be administratively in charge of the Authority. From this, I think, it can safely be inferred that the Project set-up for the aforesaid purposes was executed under the authority of the Central Government. Therefore, the appropriate Government for referring the disputes between the management of the Dandakaranya Project and its employees can safely be held to be the Central Government.

12. Besides the aforesaid reason, the further fact which is relevant and which confirms the aforesaid view is that the Project is implemented by the Central Government through the D.D.A. extending over the areas coming within the State of Orissa as well as the State of Madhya Pradesh. The disputes, as would appear from the oral evidence adduced in this proceeding, particularly the evidence adduced on behalf of the second party-workmen, arose out of the demands made by the Rehabilitation Employees' Union and Dandakaranya Shramik Sangh which espoused the cause of the employees of the Project working both within the State of Orissa as well as within the State of Madhya Pradesh. Such employees, in respect of whom reference has been made who had been working in the project but transferred it to the State of Madhya Pradesh and in the State of Orissa are interested in the result of this project. Under such circumstance, it is bound to be held that the Central Government is the appropriate Government to make the reference. Otherwise, if the contention of the management is accepted and it is held that the Central Government is not the appropriate Government but the State Government of Orissa and the State Government of Madhya Pradesh are the appropriate Governments for making the reference and the respective Governments made reference for adjudication of the disputes to the respective Industrial Tribunals existing in both the States, then there is possibility of conflict of decisions in respect of the disputes. Viewing from any angle there can be no escape from the conclusion that in respect of the disputes which have been referred for adjudication the Central Government is the appropriate Government.

As per the discussions held above, I would hold that the Contentions advanced by the management of Dandakaranya Project challenging the maintainability of the reference are not acceptable. Accordingly, I would hold that the present reference is maintainable and this Tribunal has jurisdiction to adjudicate the disputes referred therein.

13. I would now deal with the disputes which have remained for consideration after some demands were given up on behalf of the second party-workmen as catalogued at page 4 of this Award one by one.

Item No. 1 :

The first demand relates to regularisation of all muster roll workers, who had been working in the Project from 1958 onwards after completion of 240 days with all consequential benefits of such regularisation.

At present, there are 425 labourers who have not been retrenched on account of an order passed by the Hon'ble Supreme Court of India preventing the said action pending adjudication of the dispute. It is the specific case of the first party-management that these N.M.R. workers have become surplus, in as much as, there is no work for them in the Project after the normalisation process in the Project started on fulfilment of the Project of rehabilitating the displaced persons in the area. It is the further case of the first party-management that the Project is being wound-up and its assets as per the decision of the Government of India have been transferred to the Government of Orissa and the Government of Madhya Pradesh. Thus, it is contended that as surplus workmen these 425 N.M.R. employees have got to be retrenched in accordance with the provisions of the Industrial Disputes Act.

The case of the second party-workmen in this respect is that in the Project thousands of N.M.R. workers engaged in construction, irrigation and other works and at present there are 400 to 500 workers in the Nominal Muster Roll, who have been working in the Project since 1958. The second party-workmen have disputed the management's plea that no work is available for these N.M.R. workers. According to them these N.M.R. workers are being employed to perform different nature of duties in the Project. It is submitted in this regard that of these N.M.R. workers, some are qualified and they attend to the job of typing and correspondence and as such they having rendered services in the Project for so many years continuously, are entitled to be regularised.

14. In view of the aforesaid rival contentions advanced by the parties, the question which arose for determination is as to whether the N.M.R. employees, who are continuing in the employment of the Dandakaranya Project are entitled to be regularised or are liable to be retrenched.

15. For the execution of the project for rehabilitating displaced persons and developing the area where they were rehabilitated, a work force was necessary. It consisted of departmental Officers and workers. Workers were also of different categories—regular, work-charged and N.M.R.

16. It is the plea of the management that at the beginning, the workers strength in the project was five thousand but after the normalisation process started in the Project on achievement of the object for which it was created, all the work-charged staff were brought into regular establishment by conversion of their work charged post and transfer of the same into regular establishment during 1981. Since thereafter there remained no work charged staff in the Project. It is the further plea of the management that after fulfilment of the primary objective of rehabilitation and re-settlement of displaced persons there remained only 100 regular staff. Since as per the Government of India decision, assets of the Project were transferred to the State Governments of Madhya Pradesh and Orissa and the Project was in the process of being closed down, there remained no vacant regular posts in which the N.M.R. workers could be adjusted being appointed permanently. They were liable to be retrenched being surplus but they are continuing in the employment in view of the order of stay passed by the Hon'ble Supreme Court of India and per month they are being paid over Rupees 150 lacs as idle wages. The management has countered the plea of the second party-workmen that still these N.M.R. workers are engaged in work and that they are not surplus by stating that since they are available, some of them are utilised to assist the present office staff. It is also stated that the Project was purely a temporary organisation and there was no prospect of regularisation of the N.M.R. workers.

At this stage it may be necessary to refer to the relevant portions of the evidence adduced by both parties. WW-1, a Junior Accountant of the Project examined on behalf of the workmen stated that to his knowledge when in the project came into operation about five thousand workers were employed on Nominal Muster Roll and at present there are only about four hundred to five hundred N.M.R. workers who have remained in the project. He stated that all the Muster Roll workers now working in the project have long since completed 240 days of work. These workers are employed as Carpenters, Masons, Peons, Tractor Drivers, Tube Well Mistries, Roller Drivers, Pump Operators, Blacksmith etc. and some as Clerks. He stated during his cross examination that because at present the project is not engaged in doing any work and the works of the Project have been handed over to the State Governments, the N.M.R. employees who were previously being paid wages from the "Works Head" are now being paid wages from the "Wages Head". He also stated that many N.M.R. workers left the job in the project because of low wages and some were retrenched by the management on grounds of absence of work. According to him, the present four hundred to five hundred N.M.R. workers are continuing in employment of the project because their cause was sponsored by the Union and there was an order of stay by the Hon'ble Supreme Court of India preventing retrenchment. This witness stated that the assets of the project such as roads, buildings have already been handed over by the management of the project to the States of Orissa and Madhya Pradesh. During his cross examination it was brought out from this witness that since the 425 N.M.R. employees could not be retrenched by the management on account of the stay order of the Hon'ble Supreme Court of India, the management on economic grounds sent away about 300 employees of group 'D' as surplus to be adjusted elsewhere and engage the N.M.R. employees to do the duties performed by them as per requirement and this is being done for the last two years. WW-2, stated that by the time he left the project in 1986 there was work available in the project for the N.M.R. workers but could not say in which work the Muster Roll workers were engaged. He stated that the Staff Association and the Employees Union had made demands to the management that before handing over different portions of the project to the Madhya Pradesh and Orissa Governments the N.M.R. workers must be regularised and handed over to the concerned States but this was not done. WW-3, who was also an employee of the project stated that by the time he left the project in 1988, the Satiguda dam of the project had been handed over to the State Government of Orissa but roads, buildings and tanks had not been transferred. This witness stated that in Dandakaranya Project C.P.W.D. rules, instructions and forms were being followed. He, however, could not say as to if the aforesaid rules, instructions and forms were being followed in respect of the N.M.R. workers. According to him, by the time he left the Malkangiri construction division there were about 250 workers and there was work for them. In respect of the Muster Roll Workers he stated that Muster Rolls were issued against a particular work as per estimate and wages were being paid to the N.M.R. workers chargeable to the estimate.

MW-1, the Zonal Administrator of the Dandakaranya Project elaborately stated about the functions of the project and engagement of N.M.R. workers in the Project. He stated that the project was put into operation since 1958. In the project comprising of 1% area out of the Bastar district of the State of Madhya Pradesh and 2.6% area out of the Koraput district of the State of Orissa, forest lands were cleared and reclaimed and roads were laid to provide communication links for the resettled families. The displaced persons were given assistance for construction of houses with provision for supply of drinking water and other amenities. About 36,000 families (displaced persons) came from different places to be rehabilitated in the project area till 1984 of whom 11,000 families deserted the project area. There remained 25,331 families who were resettled in 428 newly constructed villages. Infrastructure facilities were provided to those families. Irrigation schemes were implemented. Number of schemes were executed to provide knowledge to the settlers about dairy, Poultry, Fishery, Agriculture etc. A number of subsidised schemes were implemented to provide necessary know how to the settlers for generating subsidiary income for them. Servicing units were set-up in the area for creating opportunities for gainful employment for the displaced persons.

M.W. 1 stated that from the very beginning of the work, in the schemes such as Irrigation, construction, fishery medical and similar other schemes N.M.R. workers were employed by the project and it present as per the abstract Ext. GGG there are 425 N.M.R. labourers retained in the project. Labourers engaged in construction and irrigation work were covered by the C.P.W.D. manual but labourers engaged in other schemes were not covered by the C.P.W.D. Manual. In 1988 the project reported to the Estimate Committee that no more families were awaiting resettlement in the project area and those already resettled had been fully rehabilitated and merged with the main stream of the local population. By 1982 the project had already been completed and the Ministry of Rehabilitation had been intimated that the assets, institutions and ongoing works in Umarkote, Kundagaon and Paralkote might be transferred to the State Governments. As per Exhibit B, D, E and F discussions were held and decisions were taken in the matter relating to normalisation of administration in the project and transfer of assets and institutions of the project to the State Governments of Madhya Pradesh and Orissa. Sanctions were issued by the Government of India to the extent of over twenty crores of rupees to be reimbursed to the State Governments of Madhya Pradesh and Orissa for the deficiencies which were found at the time of transfer. The schemes as per Exts. QQQ and RRR were implemented for re-deployment of surplus staff which according to this witness covered the surplus civil staff but not the N.M.R. labourers.

M.W. 1 stated at present there are 425 N.M.R. workers in the project for whom there is absolutely no work. He also stated that since there was no available regular posts in the project to accommodate the N.M.R. workers and there was ban on recruitment of additional staff because the project was being wound up, the N.M.R. workers could not be regularised. He referred to Ext. AA, which is an order received from the Government of India directing regularisation of casual workers against regular posts to the extent such posts are justified and stated that there being no regular posts available for them they could not be adjusted against any regular posts but were allotted works in various office to assist the regular staff.

At this stage I may refer to Ext. AA, which is an Office memorandum issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi on 7th June, 1988. It appears from the memorandum that it was issued keeping in view the judgment of the Hon'ble Supreme Court of India delivered on 17th January 1986 in the case of Surinder Singh and others Vs. Union of Ind'a, reported in A.I.R. 1986 S.C. 584. In this case guidelines have been indicated as to how casual workers are to be treated. It was directed in the memorandum—(a) all eligible casual workers are adjusted against regular posts to the extent such regular posts are justified; (b) the rest of the casual workers who are not adjusted against regular posts but whose retention is considered absolutely necessary are paid emoluments in accordance with the guidelines indicated therein; (c) remaining casual workers not covered by (a) and (b) are discharged from service.

M.W. 1 then referred to Ext. TTT, which is a letter received from the Government of India, Ministry of Home Affairs, Department of Internal Security (Rehabilitation Division) dated 25-1-88 addressed to the Chief Administrator of Dandakaranya Project which stated that in view of the order passed by the Hon'ble Supreme Court of India on 5-1-1988 in Writ Petition No. 155 of 1983 between the workmen of the Dandakaranya Project and the Secretary, Ministry of Labour Employment and Rehabilitation and others, the stay order granted by the Hon'ble Supreme Court of India on 24-1-83 preventing retrenchment ceased to be operative and therefore, the services of the N.M.R. workers for whom there was no work could be dispensed with by the Project. M.W. 1 stated that except 11 N.M.R. workers the rest did not opt to go into the employment under the State Governments of Madhya Pradesh and Orissa thinking that they would be absorbed under the Central Government. He referred to Ext. O, which is an Office memorandum issued by the Department of Personnel and Training, Government of India on 16-7-85 and stated that as mentioned therein the existing scheme for redeployment of surplus staff covers only the regular staff holding Central Civil posts and the members of the Central Civil Services and it does not cover work

charged staff or industrial staff and if the staff of the project are brought within the purview of the Industrial Disputes Act they will be rendered ineligible for redeployment facilities under the Central (Surplus Staff) Cell of the Department.

M.W. 1 was cross-examined elaborately on the question of the functioning and the claim for regularisation of the N.M.R. workers. Referring to Ext. B, which is a note for the cabinet, dated 26-4-82, regarding normalisation of administration in Dandakaranya Project and transfer of assets and institutions of the project to the Governments of Orissa and Madhya Pradesh, he stated that it was indicated therein that with the transfer of assets and institutions to the States of Madhya Pradesh and Orissa the existing staff should be given option to go over to the concerned State Governments but those staff who may not opt to go to the State Governments or who may be found surplus to the requirements of the project would have to be redeployed through the Surplus Cell of the Ministry of Home Affairs. The work charged staff who are not entitled to redeployment facilities through the Surplus Cell may, however, on compassionate ground be absorbed by the Central and State Public Sector undertaking. It was clearly stated in the said note that special efforts be made for those employees of the project who may not finally be absorbed under the State Governments or through the Surplus Cell for providing them employment under the Central/State Public Sector undertaking, particularly those in the State of Orissa and Madhya Pradesh so as to eliminate as far as possible the need for terminating of their services. This should include the work charged staff also and if despite these efforts the services of some of the staff may have to be terminated terminal gratuity or compensation as may be applicable under the relevant laws/rules may be provided to those staff before such termination.

Questioned about the winding up of the project, M.W. 1 stated that there has been no decision of the Government of India for winding up of the project but there has been normalisation resulting in reduction of man-power employed in the project. He stated that after handing over the assets of the project to the concerned State Governments the liability of the project would be looked after by the Union Government. He candidly admitted that the progress achieved by the project was on account of the combined efforts of the employees, regulars and non-regulars. He stated that the Chief Administrator of the project in his note dated 4th July, 1969 recommended that those of the employees who have rendered outstanding service, faced the rigours and hardship of pioneering work and moved through different areas of the project and substantially helped in the task of betterment of the displaced persons and tribals can be appropriately rewarded by being afforded the opportunity to serve for the normal span of their active life and qualify for full or atleast a substantial pension at the end of it (Ext. 193). He stated that all the regular employees working in the project were made permanent. It was brought out from his evidence that some of the N.M.R. employees who are still in employment of the project have run out their active span of life and they would not be taken into employment by any other organisation. Some might have crossed the maximum age limit for fresh recruitment. He admitted that the Government of India gave special sanction to create posts for regularising the work charged staff numbering about 428 but no such sanction has been received for regularisation of the N.M.R. employees though according to him the project authorities made recommendations to the Ministry of Rehabilitation for regularising the N.M.R. employees as far as feasible. It was brought out from this witness that some of the N.M.R. employees were qualified, in as much as, they have read up to matriculation and above. There are also a few graduates and intermediates who are employed as N.M.R. employees and discharging the functions of U.D.Cs. and L.D.Cs. in place of regular U.D.Cs. and L.D.Cs. who are declared surplus in the process of normalisation (Ext. GGG). He was questioned with reference to Ext. TTT from the Government of India, Ministry of Home Affairs, Rehabilitation Division dated 25-1-88 advising that the services of such N.M.R. workers for whom there was no work could be dispensed with immediately and was questioned as to why inspite of this direction the N.M.R. workers numbering 425 were not retrenched as yet and he expressed his ignorance about the matter.

M.W. 2, at present a Chief Engineer under the Ministry

of Water Resources, Government of India, who worked in the Dandakaranya Project from 1960 till 1988 in capacities such as Assistant Engineer, Executive Engineer and Superintending Engineer stated in his evidence that a few N.M.R. employees were engaged in the project for functioning as Chowkidars, Khalasis and also in connection with maintenance of roads, buildings etc, but by 1988 there was no work for such N.M.R. employees. He referred to Ext. 197 and 198 which are letters issued by the Ministry of Works and Housing on 8th July, 1981 to the Director General or Works, C.P.W.D., New Delhi about absorption of muster roll employees in the work charged establishment and he stated that all C.P.W.D. rules were not applicable to the work charged and muster roll employees of the project. Only some of the same which were made applicable by the Rehabilitation Ministry were applied in the project. He, however, could not specify as to which portion of the C.P.W.D. Manual were made applicable to the work charged and to the N.M.R. employees of the project and which were not. He stated that all the work charged employees were regularised as per Ext. 213 dated 11/15th December, 1981 issued by the Government of India, Ministry of Supply and Rehabilitation, Department of Rehabilitation. This witness clearly stated that till the stay order was received from Hon'ble Supreme Court of India there was work for the N.M.R. employees in the project. He also stated that some of the N.M.R. employees out of the present strength of 425 might have worked in the project for more than ten years.

M.W. 3 an Executive Engineer of the project, who is serving in the project since 1959 stated that at present in his division there are 278 N.M.R. employees for whom there is no work because those have been transferred to the State Governments. According to him, with the transfer of works to the State Governments though the works are continuing the employees engaged in those works are still idle under the D.D.A. because the State Governments did not take them.

17. Thus from the evidence on record, the following position emerges:—

- (a) At present there are 25 N.M.R. employees in the employment of the D.D.A. for whom there is no sufficient work for absorption as regulars.
- (b) The Dandakaranya Development Authority is in the process of being wound up since it has completed its work of rehabilitating displaced persons in the project area.
- (c) The assets of the project have been transferred by the D.D.A. to the concerned States, namely, the State Governments of Madhya Pradesh and Orissa.
- (d) The 425 employees have been working in the project since many years and most of them would not be eligible to secure fresh employment elsewhere.
- (e) All the work charged employees after an agitation made by them were regularised while the N.M.R. employees were not regularised.
- (f) The bulk of the N.M.R. employees do not have any work in the project though the works in which they had been engaged are continuing under the respective State Governments but the State Governments did not take them alongwith the works.

18. At this stage it will be worthwhile to refer to the views taken by the Hon'ble Supreme Court of India in connection with such demands made for regularisation by the daily rated casual labourers working in different organisation for several years.

In this connection, I think it will be appropriate to refer to the decision of the Hon'ble Supreme Court of India in the case of Daily Rated Casual Labour employed under the P.T.T. Department through the Bharatiya Dak Tar Mazdoor Sangh Patrons vs. Union of India and others respondents reported in AIR 1987 Supreme Court 2342 and to quote the following passage from the judgments delivered in that case:—

"India is a socialist republic. It implies the existence of certain important obligations which the State has to discharge. The right to work, the right to free choice of employment, the right to just and favourable conditions of work, the right to protection against unemployment, the right of every one who works to just and favourable remuneration ensuring a decent living for himself and for family, the right to every one without discrimination of any kind to equal pay for equal work, the right to rest, leisure, reasonable limitation on working hours and periodic holidays with pay, the right to form trade unions and the right to join trade unions of one's choice and the right to security of work are some of the rights which have to be ensured by appropriate legislative and executive measures. It is true that all these rights can not be extended simultaneously. But they do indicate the socialist goal. The degree of achievement in this direction depends upon the economic resources, willingness of the people to produce and more than all the existence of industrial peace throughout the country. Of those rights the question of security of work is of utmost importance. If a person does not have the feeling that he belongs to an organization engaged in production he will not put forward his best effort to produce more. That sense of belonging arises only when he feels that he will not be turned out of employment the next day at the whim of the management. It is for this reason it is being repeatedly observed by those who are in charge of economic affairs of the countries in different parts of the world that as far as possible security of work should be assured to the employees so that they may contribute to the maximisation of production. It is again for this reason that managements and the Governmental agencies in particular should not allow workers to remain as casual labourers or temporary employees for an unreasonably long period of time. Where is any justification to keep persons as casual labourers for years as is being done in the Postal and Telegraph Department? Is it for paying the lower wages? Then it amounts to exploitation of labour. Is it because you do not know that there is enough work for the workers? It cannot be so because there is so much of development to be carried out in the communications department that you need more workers. The employees belonging to skilled, semi-skilled and unskilled classes can be shifted from one department to another even if there is no work to be done in a given place. Administrators should realise that if any worker remains idle on any day, the country loses the wealth that he would have produced during that day. Our wage structure is such that a worker is always paid less than what he produces. So why allow people to remain idle? Anyway they have got to be fed and clothed. Therefore, why don't we provide them with work? There are several types of work such as road making, railway construction, house building, irrigation projects, communications etc. which have to be undertaken on a large scale. Development in these types of activities (even though they do not involve much foreign exchange) is not keeping pace with the needs of society. We are saving all this only to make the people understand the need for better management of man power (which is a decaying asset) the non-utilisation of which leads to the inevitable loss of valuable human resources. Let us remember the slogan "Produce or Perish". It is not an empty slogan. We fail to produce more at our own peril. It is against this background that we say that non-regularisation of temporary employees or casual labour for a long period is not a wise policy. We, therefore direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department."

In another case between the General Secretary, Bihar State Road Transport Corporation, Patna Vs. Presiding Officer, Industrial Tribunal, Patna and others reported in 1988(I)

L.L.J. 109 their lordships of the Supreme Court following the decision referred to above and some other decisions directed regularisation of casual labourers where such labourers found to had been working for a number of years.

19. In his connection, we may also refer to the following decisions in the case of Delhi Municipal Karamchari Ekta Union, Appellant v/s. P. L. Singh and others Respondents reported in A.I.R. 1988 S.C. 519 and Rallu Gowda and others, petitioners V/s. Managing Director, A.S.R.T.C. and another, Respondents reported in A.I.R. 1989 S.C. 1117 on the question of regularisation of casual workers.

In this particular case, on the admitted position that 425 N.M.R. workers, who have been working since many years in the project, some for more than ten years, now facing consequences of retrenchment on the ground that there is no work for them while workers similarly placed like them, namely, the work charged employees have been regularised, the demand for regularisation need special consideration. I find no rationale for making any discrimination between the work charged employees who had been employed in the project and subsequently regularised and the N.M.R. employees who also toiled in the project like the work charged employees for many years so as to be treated differently. As stated by M.W. 3 the works in which they had been engaged are continuing after being handed over to the concerned State Government but these people who are retained with the D.D.A. having not been taken by the State Governments are facing retrenchment on ground of non-availability of work. Considering all these circumstances, I would direct that the claim for regularisation of the 425 N.M.R. employees now in employment of the D.D.A. is justified and that they would not be liable to retrenchment as demanded by the D.D.A. The D.D.A. through the Government of India should find out ways and means to regularise them either under the Central Government, concerned State Governments or under other Public Sector Undertakings of the Central Government or the concerned State Governments.

True it is that the Dandakaranya Development Authority or for that matter, the Dandakaranya Project cannot be equated with an ongoing industry carrying employment facilities but as stated earlier by me, the works in the project have been transferred to the concerned State Governments without the men employed in the works, who are now termed surplus. Such plea, in my view, ill comes from the mouth of a Government agency such as the D.D.A.

In the circumstance, I think, the appropriate course for the D.D.A. would be to find out work for the 425 N.M.R. workers who have been working in the project continuously for more than 240 days. During the period intervening from the date of this award till regularisation of the aforesaid N.M.R. workers, they should be entitled to retaining allowance at the rate of half the wages they are now earning.

Item No. 2 :

20. The next dispute which has been referred for adjudication relates to the question of reinstatement of all such muster roll workers with back wages who were retrenched from services after issue of the order of stay by the Hon'ble Supreme Court dated 24th January, 1983.

So far as the aforesaid question is concerned, it is contended on behalf of the union representing the second party-workmen that after issue of the stay order 14 workmen, namely, (1) Jesudan Bag, (2) Smt. Gracien Bag, (3) Arjun Behera, (4) Congress Nag, (5) Nandala Biswas, (6) Smt. Indira, (7) Smt. Rafina Nag, (8) Smt. Chandri, (9) Harinath Panka, (10) Smt. Prem Durga, (11) Sudansu Biswas, (12) Sri Irma Padami, (13) Sri Uma Padami and (14) Sri Muka Kadkami were retrenched. It is further alleged that apart from the fact that the aforesaid N.M.R. workers were retrenched in violation of the Court's order the same was also bad on account of the fact that the conditions precedent prior to such retrenchment as provided in Section 25-F of the Industrial Disputes Act were not complied.

The first party-Management denied the aforesaid allegation made by the union and contended that the N.M.R. workers absented themselves voluntarily from duties, and lastly discontinued on their own accord. The Management's specific case is that none of the employees were retrenched or terminated from employment after receipt of the stay order of the Hon'ble Supreme Court of India.

M.W. 1, the Zonal Administrator of the Dandakaranya Project stated in his evidence in this connection that the Hon'ble Supreme Court's order dated 24th January, 1983 directing that there would be no retrenchment was communicated by the Ministry of Rehabilitation to the Chief Administrator of the project by Ext. V. which was received by the Chief Administrator at Koraput on 18th May, 1983 and on the day following i.e., on 19th May, 1983 letters were issued vide Ext. W from the Project headquarters to all Heads of Organisations and all Heads of Offices directing implementation of the order of stay passed by the Hon'ble Supreme Court of India. It was stated by M.W. 1 that after receipt of the order from the Government of India, Ministry of Rehabilitation, there was no retrenchment made by any N.M.R. worker employed in the project. At the evidence stage the union came forward with the case that after receipt of the order of stay from the Hon'ble Supreme Court of India, 32 N.M.R. workers as per Ext. 69 were retrenched. M.W. 3, the Executive Engineer, Construction Division was questioned about such retrenchment and he stated that none of the 32 workers were removed from employment but they left their services voluntarily and did not report to duty. In this connection, he referred to the letter Ext. AAA dated 8th January, 1987 which was sent to the Executive Officer (Admn.), Project Headquarters intimating that the 14 N.M.R. workers who were allegedly retrenched from services as stated by the Union in Ext. 73 were really not retrenched but they abandoned their employment of their own.

The evidence and the facts revealed in this case go to show that the Hon'ble Supreme Court passed the order of stay on 24th January, 1983 but before the same was received by the D.D.A. in May, 1983 there had been retrenchment of 14 N.M.R. workmen as shown in Ext. 73. Admittedly, before effecting the retrenchment the requirements of Section 25-F were not complied and as such the retrenchment of the said 14 employees become illegal. In the circumstance, the said 14 workmen named above are entitled to be reinstated with full back wages.

Item No. 3 :

21. This item of dispute overlaps the dispute No. 1 which I have already dealt with earlier in this Award. It relates to the 425 N.M.R. workers, the demands in respect of whom were dealt with under item No. 1 of the disputes. I have elaborately examined the question and adjudicated upon the same and also recorded my views and findings. I have given necessary direction in the said matter, which governs this item of dispute. I need not repeat the same again.

Item No. 4 :

22. Item No. 4 of the dispute relates to the question of grant of permanency to Sri B. B. Das, the Former Branch Secretary of Class-III and Class-IV Employees' Association and former General Secretary and presently President of the Rehabilitation Employees' Union from 1972 and grant of retirement from 1976 by accepting his letter dated 21st February, 1976 withdrawing the conditional resignation.

Sri B. B. Das, it is proved, is the former Branch Secretary of the Class-III and Class-IV Employees' Association and also the former General Secretary and the present President of the Rehabilitation Employees' Union. He was working as an U.D.C. in the Office of the Chief Administrator, Dandakaranya Project. It is allegedly by the second party that in view of his association with the trade union, which was sponsoring the cause of the employees of the project, the authority was out to victimise him in various ways. On many occasions false and frivolous allegations were brought against him and he was denied legitimate promotion to higher ranks. In the year 1972, the Government of India declared 25 per cent of the posts in each cadre of the employees of the D.D.A. as permanent. By then Sri Das was the senior most in the cadre and was to be declared permanent. The Departmental Promotion Committee though met to consider the question of making Sri Das permanent in the post he was holding neither made him permanent nor declared him unfit for being made permanent. Sri Das and the Union made several representations in this matter but there was no result. Sri Das however, was considered fit to cross the efficiency bar during this period without being made permanent.

It is further alleged that during the period of emergency in the year 1975 the victimisation and harassment meted out to Sri Das reached their peak. He was not allowed to visit different areas within the project to carry on his union acti-

vities. He was almost kept under vigil. As a result of such harassment he suffered health break down and under such circumstance he applied to the Chief Administrator of the project in July, 1975 (Ext. 118) seeking voluntary retirement after being declared permanent and surplus. Since he had completed twenty five years of service, his date of appointment in the Central Government being 1st April, 1950. In November, 1975 he submitted another application (Ext. 119) giving one month notice for voluntary retirement. He also submitted another application Ext. 120 to the Chief Administrator of the project requesting for getting him medically examined for cardiac trouble as he wanted to retire on medical ground. The Medical Board, which examined him, however, did not find him unfit for continuing in government service and again in December, 1985 he wrote to the Chief Administrator of the project for his re-examination by the Medical Board mentioning therein that if the Board would find him fit for continuing in government service and on that basis he is not permitted to retire on medical ground he would resign from service with effect from 10th February, 1976 as per Ext. 121. Sri Das went to Delhi where he met the Union Deputy Minister for Rehabilitation and requested to make him permanent and as alleged in the statement of claim of the second party, as the Dy. Minister refused to consider his request for grant of permanency and threatened him with serious consequences for his trade union activities, he sent a letter on 9th February, 1976 (Ext. 123) to the Chief Administrator of the project tendering his resignation giving therein three months notice as per practice and procedure of the project with the clear condition that the period of three months notice could be reduced and acceptance was intimated to him. Sri Das, however, did not receive any reply to his letter of resignation in his Delhi address nor did he receive any order regarding relaxation of the period of notice until 21st February, 1976, when, on the advice of his relations, friends and well-wishers, he sent a letter to the Chief Administrator of the project as per Ext. 124 withdrawing the letter of resignation dated 9th February, 1976.

On 7th April, 1976 Sri Das returned from Delhi to Koraput after being cured and found a letter sent to him by the Chief Administrator of Dandakaranya Project intimating him that his resignation had been accepted with effect from the forenoon of 18th February, 1976 (Ext. 125). On 15th April, 1976 he made an appeal to the then Union Minister for Rehabilitation with a copy of the Chief Administrator of the Project praying for withdrawal of the letter dated 17th February, 1976 (Ext. 125) but it yielded no result. He then made representation again in August, 1978 to the then Union Minister for Rehabilitation and in November, 1979 made appeal to the Chairman of the Project but to no effect. Many members of the Parliament also wrote to the concerned authorities and the Minister for acceptance of the letter sent by Sri Das seeking withdrawal of the resignation and for permitting him for voluntary retirement but these also yielded no result. In the context, the present dispute was raised by the Union claiming that Sri Das be declared permanent in the cadre and he may be declared to have voluntarily retired from services on completion of three months notice which expired on 9th February, 1976.

23. The first party in its written statement filed in this proceeding refuted the several allegations made by the second party in relation to Sri B. B. Das and stated that disciplinary proceedings had been started against Sri Das for certain misdemeanours and misconduct committed by him on the basis of complaints received from various authorities regarding his local political activities, canvassing for the State Election and interference with local administration in matters of law and orders. While these were pending, Sri Das submitted his resignation on 9th February, 1976 which was accepted by the D.D.A. on 17th February, 1976 after-noon and his name was struck off from the roll with effect from 18th February, 1976 fore-noon. The charges pending against Sri Das were withdrawn and the proceeding against him was closed. Sri Das unsuccessfully filed several writ applications claiming to have been continuing as government servant. He filed nomination for Election as a member of the Legislative Assembly in the election held in 1977 and contested the same. He also contested for the Chairmanship of the Notified Area Council at Koraput held on 31st January, 1979. In the circumstance, it was contended that there is no question of reversing the position and treating Sri Das to be continuing in service so as to permit him to retire from service voluntarily with effect from 9th February, 1976.

In this connection, I propose to refer to the evidence adduced by the parties, both oral and documentary, which clarify the positions taken by the Union, as also, by the D.D.A. on this matter. From the letters, which Sri Das admitted to have sent to the D.D.A. it becomes clear that he repeatedly expressed his desire to go out of the employment of the Project, may be on account of disgust or may be for some other reasons, on retirement, which could be possible only on his being declared permanent and surplus. He also wanted even to go out of the employment of the project on medical grounds as being unfit to continue further in the service. The medical board, however, did not find him unfit to continue in the Government service and thereafter Sri Das tendered his resignation and even wanted that the period of three months which is usually given for acceptance may be shortened and his resignation be accepted before expiry of the period of notice. Subsequently, Sri Das withdrew his resignation. The plea of the D.D.A. in this connection is that the resignation was accepted on 17th February, 1976 before Sri Das decided to withdraw the same which he did by sending the letter from Delhi on 21st February, 1976.

24. Sri B. B. Das examined as W.W. 9 stated that he was victimised by the D.D.A. in several ways for his union activities. He stated that in 1973 the Government of India issued instructions to make 25 per cent of the employees permanent and being the senior most U.D. Asstt. at that time he should have been made permanent but it was not done though during the very same year he was allowed to cross the efficiency bar with all consequential benefits. The matter relating to his confirmation was taken up by the Departmental Promotion Committee on several occasions but his case was not at all considered. In July, 1975 he represented to the management to permit him to voluntarily retire from service under the Surplus Staff Scheme but received no reply from the management. On 10th November, 1975 he again represented to the management to permit him to retire voluntarily as by then he had completed 25 years of service but he received no reply to that. In December, 1975 while he was in Delhi for treatment on leave he discussed the matter about his retirement from service with the Deputy Minister for Rehabilitation and he was advised to approach the Project Administration in the matter. As he was then in a very bad shape of health and was undergoing great mental strain and stress, out of disgust and anguish he submitted his resignation to the Chief Administrator as per Ext. 123 on 9th February, 1976. After being persuaded by a number of employees and members of the Union and the Association and others, he withdrew the resignation by letter Ext. 124 submitted to the Chief Administrator. On 7th April, 1976 when he came to join in the Office he was not allowed to join though he had received no communication from the management of the project in his Delhi address intimating that his resignation had been accepted. Sri Das stated that though he had fulfilled all the criteria for being made permanent by 1973, deliberately he was not made permanent on account of his union activities. No communication was sent to him by the D.D.A. that the prayer made by him in his resignation letter for relaxation of the period of notice had been accepted. He further stated that though he was appointed by the Chief Administrator of the Project as per Ext. 117 the acceptance of his resignation letter was signed by the Senior Executive Officer (Admn.), who is subordinate to the Chief Administrator as per Ext. 125. Sri Das cited the instance of a driver, named, M. Satyanasan, who had resigned as per Ext. 128 giving three months notice on 25th August, 1975 which was accepted by the D.D.A. with effect from 24th November, 1975. He cited the instance of a Nurse who had been deemed to have resigned with effect from 21st April, 1970 but subsequently allowed to join the project on production of fitness certificate under the Fundamental Rules. These instances, however, do not appear to be relevant because Sri Das had admitted during his cross examination that the Driver M. Satyanasan did not ask for relaxation of the notice period in his resignation letter and the Nurse was a temporary project employee, who was governed by the temporary Service Rules.

Sri Das in his cross-examination admitted that during the year 1977 he was on leave for 180 days, during the year 1974 he was on leave for 214 days, and during the year 1975 he was on leave for 149 days on medical grounds. He stated that on 3rd February, 1976 he submitted an application for leave till 31st March, 1976 citing his leave address. In the letter of resignation which he submitted on 9th February, 1976 he mentioned that his resignation would take effect from the date it would be accepted and intimated

to him in writing and he further mentioned therein that the Chief Administrator might reduce the notice period. He did not enquire as to what had happened to his resignation letter and the letter withdrawing the same until 7th April, 1976.

25. M.W. 4, the Asst. Executive Officer of the Project proved the copy of the memorandum dated 1st December, 1975 Ext. 236 in which the representations of Sri Das Exts. 119, 120 and Ext. PPPPP were considered and orders passed. It appears from this memorandum that Sri Das made three prayers which were considered and orders passed. Those were—(a) Compulsory retirement or voluntary retirement or retirement on medical ground from government service or retirement on whatever ground within a month from the date of his application dated 10th November, 1975 (b) If he is not released from service with effect from 4th December, 1975 he will cease to be an employee of the project on and from the said date (c) to direct for his examination by the Chief District Medical Officer for medical opinion for declaring him unfit to continue further in government service. It further appears from the said memorandum that the authority was of the view that since Sri Das was not a permanent government servant he could not be retired on voluntary basis which was not covered under the rules. Sri Das was informed that he would be examined by a Board comprising the Medical Officers approved by the Government of India for the employees of the Dandakaranya Project. Sri Das was further informed that in case the medical board did not find him unfit for Government Service his declaration that he would cease to be an employee of the Dandakaranya Project from 11th December, 1975 would be treated as resignation from Government service and would be accepted. M.W. 4 proved Ext. RRRRR which contained the views of the medical board after examination of Sri Das and it was of the opinion that Sri Das was not unfit to continue in service. It is only after report that Sri Das submitted his resignation in Ext. 123 which was accepted as per Ext. SSSSS dated 17th February, 1976 after consideration of the Office note submitted to the Chief Administrator. On the very same day, the order seems to have been communicated to Sri Das in his address—Qr. No. E-6, Dundakaranya Colony, Koraput. The same also seems to have been communicated to Sri Das by registered Post with A/D in his Delhi address as furnished by him as per Ext. III. Ext. RRRR is the postal envelope by which the letter is said to have been despatched to Sri Das in his Delhi address by Regd. Post with A/D, as told by M.W. 4.

On a careful consideration of the evidence on record, both oral and documentary, on this question, I find no material to accept the contention of the second party that the resignation tendered by Sri B. B. Das was not voluntary and was the outcome of coercion.

26. Several correspondences have been proved in this proceeding which need reference in connection with the above matter. I may refer to Ext. 218 proved on behalf of the second party which is a letter written by Sri A.C. Das, Member of Parliament (Lok Sabha) and President of the Rehabilitation Employees' Union to the Secretary, Department of Rehabilitation, Government of India on 18-1-76. In this letter the M.P. Sri Das wrote that Sri B. B. Das had been trying for quite some time past to go out from the job after taking retirement benefits from the Dandakaranya Project but because he had not been confirmed in the post he could not get himself released from service. He had mentioned in his application dated 10th November, 1975—Ext 119, that he desired to go out of service to work for the members of the weaker section in both industrial and rural areas of the backward district of Koraput in the context of the implementation of the 20 point programme of the Prime Minister Smt. Indira Gandhi and he requested that the Chief Administrator of the Project be impressed upon to cancel the order by which Sri Das had been transferred to Malkangiri, to confirm him in his post from 1973 when he was due for confirmation and to allow him to retire voluntarily after confirmation so as to enable him to get all pensionary benefits and also to permit him to retain the project quarters in which he was staying on reasonable rent as he has to function as the General Secretary of the Union and the Association. Ext. 218 is another letter written by Sri A. C. Das, M. P. and President of the Rehabilitation Employees' Union to the then Deputy Minister, Supply and Rehabilitation Department on 3-2-76 thanking him very much and expressing his gratefulness for showing a good gesture in allowing Sri Das to cross the efficiency bar with retrospective

effect. He enclosed a note to his letter which contains several matters in which there was also a request made to confirm Sri B. B. Das in the first batch of Upper Division Clerks. In the note request was also made to allow Sri Das to retire from Government service. Ext. 219 is a letter dated 8-4-80 from Sri Vasant Sathe to Sri A. C. Das, M.P. in reply to a letter of Sri A. C. Das intimating him that on careful examination of the case, he found that Sri B. B. Das had voluntarily resigned from service on 9-2-76 which had been duly accepted with effect from 18-2-76. It was also mentioned in the letter that as per the report of the Chief Administrator of the project, the work, conduct and character of Sri Das while in service had not been satisfactory and it would not be desirable to take him back in service. The Minister recorded that it would not be possible for the Government to interfere in the decision of the project at that stage. In a similar letter sent by Sri Bhagawat Jha Azad, Minister of Supply and Rehabilitation, India on July 25, 1981 in reply to a letter of Sri A. C. Das, M. P. to the Prime Minister, it was written that since the resignation submitted by Sri Das had been accepted with effect from 18-2-76 it was not possible to take him back in service.

In the circumstances stated above and in view of the evidence adduced in this proceeding, I do not think, it would be possible for this Tribunal to record a finding that Sri Das should be granted permanency in his post from 1972 and would be permitted to retire from service pursuant to his letter dated 21-2-76 withdrawing the letter of resignation submitted by him. I find absolutely no justification for giving any such direction.

Law is well settled that where an employee tenders resignation voluntarily and it is accepted the contract of service between the employer and the employee comes to an end. Where an employee invites the determination of his employment by a letter of resignation the services normally stands terminated from the date on which the resignation is accepted by the employer and in the absence of any law or rule governing the condition of service to the contrary it will not be open to the employee to withdraw his resignation after it is accepted by the employer. In this case, not only the resignation was accepted with effect from 18-2-76 but the acceptance was intimated to Sri B. B. Das both in his Delhi address which he had furnished and also in his local address. In the circumstance, I don't think, any direction could be given to the D.D.A. to rescind the order passed on 17-2-76 accepting the resignation of Sri Das with effect from 18-2-76 on the basis of his withdrawal letter dated 21-2-76.

Item No. 5 :

27. The next item of dispute relates to waiving of Rupees Seventeen thousand which has been claimed from Sri B. B. Das as penal rent in respect of Qr. No. E-6 which had been allotted for the occupation of Sri Das while he was in employment of the Dandakaranya Project.

The first objection to this item of dispute seems to be that it is not an industrial dispute so as to entitle this Tribunal to adjudicate upon.

'Industrial Dispute' has been defined in Section 2(k) of the Industrial Disputes Act to mean any dispute or difference between employers and employees or between employers and workmen, or between workman and workmen, which is connected with employment or non-employment or the terms of employment or with the conditions of labour of any person. The matters which may give rise to industrial dispute have been enumerated in the Second and Third Schedule to the Industrial Disputes Act. There is no specific mention in either of these schedules that payment or non-payment of rent for a quarter occupied by an employee could be an Industrial dispute.

The present dispute between the parties which has been referred for adjudication arose under the circumstance that the D.D.A. after terminating the services of Sri Das by acceptance of his resignation letter treated him as an unauthorised occupant in the quarters allotted to him. Sri Das, on the other hand, contended that he was not liable to pay any rent because though the quarters had been allotted in his name as an employee, infact the allotment was in favour of the Union and the Association, the offices of which were functioning therein. Strictly speaking, I don't think, this is an Industrial Dispute coming within the scope of the Industrial Disputes Act.

In this respect Sri B. B. Das stated in his evidence that the Rehabilitation Employees' Union which was the only Trade Union operating in the Project approached the management of the D. D. A. to provide a quarter to the Union where it could hold its Office. The Management, according to Sri Das, agreed to the suggestion and allotted a quarter in the name of Sri Das, who was its President but not in the name of the Union because it had not been recognised. The Staff Association was also not a recognised association. The Offices of the Staff Association and the Employees Union functioned in Qr. No. E-6 which was allotted in the name of Sri Das where he held the Offices of the Association and the Union on which he was an Office bearer. Sri Das stated that he was, however, residing not in this quarter but in a quarter allotted to his wife, who was a lady teacher in the Government High School, Koraput and had been provided with a Government Quarter by the State Government. Sri Das then stated that the D.D.A. gave him notice to vacate the quarter E-6 but he represented that he should be allowed to retain the same for running the Offices of the Association and the Union. Sri Das stated that letters to the Union and the Association were being addressed to this quarter No. E-6. According to him, in the year 1980 the Staff Association was recognised by the D.D.A. and it was allotted a quarter. He also resigned from the Staff Association and thereafter, the Office of the Staff Association was shifted from Qr. No. E-6 to the new quarter allotted to it and then the Office of the Union was shifted to a rented house and Qr. No. E-6 was vacated. In 1980 or 1981, the management of the D.D.A. claimed Rs. 17,663.55 paise from him towards house rent in respect of Qr. No. E-6 after the claimed became barred. His representation in this regard made to the Estate Officer was not considered and a certificate was issued for recovery of the amount from him under the Public Demands Recovery Act. He stated that the Union and the Association, in the circumstance, requested the management of the D.D.A. and the concerned Ministry to waive this amount. During his cross-examination he admitted that he approached the Court of the District Judge, the High Court of Orissa and the Supreme Court of India challenging the order of eviction against him from Qr. No. E-6 and the writ petitions were rejected. He then made representation through the President of the Union to the Central Ministers.

The witnesses examined for the Management denied the stand taken by Sri Das on this question as untrue. The allotment order passed by the Secretary of the Accommodation Allotment Committee of the Dandakananya Project Ext. TTTT dated 18-8-75 would go to show that Qr. No. E-6 was allotted to Sri B. B. Das, U.D.C. There is no reliable evidence available to accept the plea of the second party that the Qr. No. E-6 was really allotted to the Staff Association and the Union but in the name of Sri Das because the Association and the Union had not been recognised by the Management of the D.D.A. In the proceeding for eviction initiated against Sri Das order was passed directing eviction which was unsuccessfully challenged by Sri Das in all the forums. It would appear from Ext. SSSS, which is the judgment passed in Civil Misc. Appeal No 18/77 before the District Judge, Koraput filed by Sri Das challenging the order passed by the Estate Officer directing his eviction from the quarter No. E-6 that the appeal was dismissed on the finding that Sri Das ceased to be an employee of the D.D.A. since 18-2-76 and thus his occupation thereafter in the said quarters was unauthorised. The matter seems to have been set at rest thereafter since Sri Das has not been able to get the order of the District Judge, Koraput reversed.

It is seen that there has been an order passed by the Estate Officer for recovery of penal rent from Sri Das and a letter has been issued to the Collector, Koraput for recovery of the amount under the Public Demands Recovery Act in a Certificate Proceeding. The authorities under the said Act are empowered to deal with the matter about recovery of rent. The Industrial Tribunal, in my view, has no jurisdiction to pass any direction for waiving the penal rent which has been claimed from Sri Das under the Public Premises Eviction Act and is being recovered from him under the Public Demands Recovery Act. The second party Sri Das may seek remedy in the matter by approaching the appropriate forum. Item No. 6 :

28. This item of dispute relates to the question of reinstatement with back wages of Sri P. K. Swain, the Former Joint Secretary and Secretary of the Rehabilitation Employees' Union, who was retrenched from service on 30-6-1980.

It is the case of the second party in connection with this dispute that Sri Swain on account of his union activities was victimised and was retrenched in contravention of the provisions of Sections 25-F, 25-G and 25-H of the I.D. Act, Sri Swain worked as Ranger and Chowdhury Grade-II. While working as Chowdhury Grade-II in the work-charged establishment in Paralkote Irrigation Divn., Bastar, Madhya Pradesh he was served with the notice Ext. 104 on 30-5-1980 intimating that his services would stand terminated with effect from the date of expiry of the period of one month from the date of notice and as per Ext. 105 he was relieved from his duty on 30-6-89 after noon. This is clearly a case of retrenchment and it has also been admitted to be so. It has been stated by the first party-management that the retrenchment was brought about due to reduction of the strength of the establishment and not on account of any grudge against him for his union activities. It, however, appears that on or before the date of retrenchment Sri Swain was not paid the retrenchment compensation to which he was entitled under section 25-F of the I. D. Act. Ext. DDID would go to show that the amount for payment of the compensation amount was prepared in July, 1980 which Sri Swain received on 28-7-80. Arrear compensation was sent to Sri Swain in March, 1982 as per Ext. EEEE and the differential amount of compensation on account of subsequent revision of pay was sent to him in August, 1987 as per Ext. FFFF.

Sri Swain, examined as W.W. 7, stated on oath that prior to his retrenchment though he had been served with a notice he was not paid retrenchment compensation but subsequently he was paid some money. M. W. 4 stated that the services of Sri Swain were terminated on 30-6-80 and he was paid retrenchment compensation on 28-7-80.

In the circumstance, since the retrenchment compensation had not been paid to Sri Swain on or before his retrenchment on 30-6-80, which is a condition precedent for effecting the retrenchment, the action of the Management of the D.D.A. has to be held to be illegal.

Now coming to the question as to the relief which could be granted to Sri Swain, it is claimed by the second party that he should be reinstated with full back wages, in as much as, the work-charged staff who continued in the employment of the D.D.A. have been regularised being taken to Surplus Cell. I think, it would be appropriate in the circumstances of this case that Sri Swain, who has been illegally retrenched from service should also get similar treatment like the other workcharged employees of the project. I would accordingly direct that Sri Swain be reinstated in service and steps be taken for his regularisation like the other workcharged employees of the Project. So far as back wages are concerned, I think, considering the circumstances of this case, Sri Swain should be allowed back wages at the rate of fifty per cent of his wages from the date of his retrenchment till the date of this award and thereafter full wages from the date of the award till his reinstatement.

Item No. 7 & 9 :

29. These two items of dispute relate to reinstatement in service of Sukuru, Jai Das, Ram Bisro, Soma Suren and V. N. Parida and twenty five others who were workcharged employees and were allegedly retrenched in 1975.

The case of the second party in connection with these two items of demands relating to the aforesaid workmen is that they were retrenched illegally during the year 1975 on different dates in violation of Section 25-F of the I. D. Act. in as much as, prior to the retrenchment they were not paid retrenchment compensation. It is further alleged that though the D.D.A. provided alternative employment to some retrenched employees, such facility was not extended to the aforesaid thirty workmen and thus, it was urged that these workmen should be held to have been illegally retrenched and they should be reinstated from the date of termination with all consequential benefits.

The case of the management on the other hand is that the work-charged establishment was identified as surplus. Government sanction for continuance of the above surplus staff beyond 28th February, 1975 was not received and therefore, the Project Administration had to dispense with their services by serving on each of them one month notice on 1st February, 1975. It is also submitted on behalf of

the Management that since the work-charged establishment was a temporary establishment, the work-charged employees were not entitled to the benefits of deployment under the Central (Surplus Staff) Cell Rules but were entitled to retrenchment compensation and other terminal benefits as admissible under the Rules. According to the Management they were paid retrenchment compensation.

The list marked Ext. CCC produced by the First Party contains the name of 29 work-charged staff showing their dates of appointment and dates of termination and also showing the amount of compensation paid to each of them. In this connection, we may look into the evidence adduced by the First Party in this proceeding. MW-2, who was an Executive Engineer of the Project from 1966 to 1976 stated in his evidence that in the year 1975 some work charged employees were retrenched and the retrenchment was done as per the seniority list. He also stated that the work-charged employees who were retrenched were paid retrenchment compensation. MW-3, who was also an Executive Engineer of the Project stated that in the year 1975, 28 work charged employees were retrenched after notice to them, who were paid compensation. He cited Ext. 165 dated 28-1-75 as one such notice which was served on one of the 28 work charged employees who was retrenched with effect from 28-2-75. He also referred to Ext. CCC in which the date of termination, date of appointment and the amount of compensation paid to each such workmen are mentioned. MW-3 stated that after such retrenchment was effected the project authorities received orders to continue the surplus work charged employees in employment up to 30-4-75 and also to reinstate those of the work charged employees who had been retrenched on 28-2-75. Such employees were then noticed by the project authorities to join their duties not later than 25-3-75 and they were asked to deposit the compensation amount they had received. They were also intimated that the intervening period from 1-3-75 till they join their duties would be treated as leave for which they would submit leave applications. He cited Ext. VVV dated 18-3-75 as one such notice. This notice shows that some of the retrenched workcharged staff were informed by notice that Government order had been issued for continuation of surplus work charged staff up to 30-4-75 and for reinstatement of those whose service had been terminated with effect from 28-2-75. Those workmen were informed that they should join their duties not later than 25-3-75 and further that they should deposit the full amount of compensation paid to them as terminal benefits at the time of joining, failing which their joining report will not be entertained, besides filing leave applications for the intervening period. MW-3 referred to Ext. WWW dated 29-3-75 and stated that out of the work charged staff employed, 19 joined. He stated that one of such work charged employee Dandapani Das received the notice like Ext. VVV but he did not join and he wanted to be a petty contractor. He was awarded several works as a petty contractor in his division after his retrenchment. MW-3 proved the agreements and the work orders pertaining to his division for the year 1974-75 to 1979-80 to show that Sri Das worked as a petty contractor in his division from 1975-76 to 1979-80 (Ext. HHHHH, JJJJJ and KKKKK). During his cross-examination he stated that at the time of retrenchment of the surplus work charged employees in the year 1975, they were paid compensation in accordance with the salary they had been drawing then and subsequently after revision of pay, the differential amount to which they became entitled on account of such revision were also paid to each of them. MW-3 denied the suggestion made to him on behalf of the second party that the work charged employees, who were retrenched on 28-2-75 had not been paid compensation either before or on the date they were retrenched. He stated that all of them were offered compensation on the date of retrenchment but some who were present refused to receive the amount on that day which they received subsequently. He could not say if it has been mentioned anywhere or if there was any document to show that some of the work charged employees who were retrenched were absent or being present they refused to accept the compensation. He also admitted that there was no seniority list of the work charged employees posted at the place of work seven days prior to 28-2-75 when they were retrenched. He could not say if after expiry of the notice period each of the workman was served with the order that his name was struck off from the roll. It may be mentioned here that the plea that the retrenched work charged employees were asked to rejoin in the rost in view of the Government order has not been stated by the First Party

in its written statement. He denied the suggestion made to him that notice like Ext. VVV was not issued and served on the concerned work charged employees. No document showing service of such notice on the concerned work charged employees has been proved and filed in this case. Similarly the cash books showing payment of compensation and refund of compensation have not been produced in this proceeding. Ext. UUU contains sixteen vouchers showing payment of compensation to the retrenched work charged staff and as per the certificate of the Executive Engineer the payments were made after the date of retrenchment. It may be stated here that as shown in Ext. CCC, out of the 29 work charged employees retrenched in 1975, 7 were retrenched on 28-2-75 and the rest on 30-4-75. The payments as certified in Ext. UUU were made on 1-5-75 and thereafter. The workmen have denied to have been paid retrenchment compensation either prior to the date of retrenchment or on the date of retrenchment. In the circumstances, it is difficult to hold that there has been payment of retrenchment compensation prior to the date on which they were retrenched. There is also no clear evidence before me to know as to whether these 29 work charged staff ere then the junior most to be retrenched.

In the circumstances, there can be no escape from the conclusion that the retrenchment of the workcharged staff, 29 in number, as shown in Ext. CCC was illegal being in contravention of Section 25-F of the Industrial Disputes Act.

There is evidence adduced in this proceeding that out of the said retrenched workcharged staff, Sri Dandapani Das worked as a petty contractor in the year 1975-76 and some others also joined the duties pursuant to the notice Ext. VVV. In the circumstances, I would direct that those of the workcharged employees who rejoined their employment pursuant to the notice Ext. VVV would be entitled to back wages at the rate of fifty per cent of the wages they were receiving then for the period they remained unemployed. Sri Dandapani Das would be entitled to back wages at the rate of fifty per cent of the wages he had been receiving from the date of his retrenchment till the date when he worked as a petty contractor in the Project as deposed by MW-3. coming to the case of the rest of the workcharged employees who remained unemployed since after their retrenchment, I would hold that considering the long years that have passed since after their retrenchment and further that the project is in the process of normalisation they would not be entitled to the relief of reinstatement. In the facts and circumstances of this case, I think, ends of justice would be met if they are awarded reasonable compensation in lieu of reinstatement. I feel, in the circumstances of this case, award of compensation at the rate of Rs. 15,000 to each such workmen would meet the ends of justice and those out of them who have already received the compensation subsequent to their retrenchment would have to refund the same to the First Party by way of adjustment.

Item No. 8 :

30. The next item of dispute which I shall now deal with relates to the question of reinstatement of 32 N.M.R. workers who were retrenched in 1965.

So far as this item of dispute is concerned, it is the case of the second party that these 32 workmen were employees of the State P.W.D. Department since 1952. By an order passed on 19th November, 1958 Sri K. T. Subudhi Executive Engineer Koraput Division placed the services of those workmen at the disposal of the D.D.A. alongwith the kota-Malkan giri Road in which they had been working. These workmen thus came under the employment of the Dandakarnya Project. The Assistant Engineer, Dandakarnya Construction Sub-Division, Mathili, however, terminated their services by his letter dated 29-10-65, 3-11-65, 30-11-65 and 13-11-75. They were, however, not paid any retrenchment compensation prior to their retrenchment. The matter was taken up by the Union in June 1979, before the Regional Labour Commissioner but no action was taken. Again in the year 1981 and in the year 1983 Sri A. C. Das, M.P. also took up the matter with the Union Rehabilitation Minister but it yielded no result. The concerned workmen filed affidavits in support of their claim for reinstatement but no action was taken therfore. In December, 1983 such affidavits were submitted by the Union to the Chief Administrator of the Project but to no effect. All attempts made by the Union bare no fruit and ultimately, as per the direction

of the Hon'ble Supreme Court of India the dispute was referred for adjudication. The second party demanded reinstatement of these 32 workmen with all consequential benefits. The name of the 32 workmen are mentioned in the statement of claim filed by the second party.

In respect of this dispute, the plea of the First Party is that the letter of the Executive Engineer, Koraput Division placing the services of the 32 workers at the disposal of the D.D.A. alongwith the Kota-Malkangiri road in which these workmen had allegedly been working having not been furnished by the second party and there being no available record to verify the same, it was not possible for the D.D.A. to say as to which workman came to work on transfer from the State P.W.O., which workman really worked in the project and were retrenched. It was stated by the First Party in its written statement that out of the list of 32 workmen mentioned in the statement of claim of the second Party, Sri Ganesh Panigrahy at Sl. No. 20 and Budu Hontal at Sl. No. 31 of the list had never worked in Dandakaranya Project. The services of Sri Dhana at Sl. No. 25 of the list were terminated in 1965. Some of the workmen such as Sl. No. 1-Budu Boko, Sl. No. 18-Bubhisan, Sl. No. 22 Gangadhar Godangi and Sl. No. 28-Kurti Dora left the employment of the project of their own without giving intimation to the project authorities. Under such circumstances, the First Party submitted in its written statement that at this late stage, that is about twenty three years after the alleged occurrence, it was not possible for the Project authorities to state as to who actually came from the State P.W.D. and worked in the Dandakaranya Project and left without intimation after working for a short time. In other words, their plea is that the belated demand made by the second party in respect of these 32 workmen should be considered as stale and should be dropped.

WW-1, the General Secretary of the Employees' Union stated that 32 employees belonging to Scheduled Tribe who had been working in the project were retrenched without being given retrenchment compensation in 1965. During his cross examination he stated that he could identify the 32 Khalasis who had been retrenched in 1965 from the Official records. He denied the suggestion that only five out of the 32 could be identified and not the rest. He also admitted that in 1983 affidavits in respect of these 32 workmen were submitted to the Management. WW-3 stated that 32 Khalasis were working in Kota-Malkangiri road under the Government of Orissa in 1958. This road was transferred by the Government of Orissa to the D.D.A. in 1958 alongwith the said 32 Khalasis who were in the workcharged establishment. These workmen were however retrenched in 1965 without being paid retrenchment compensation. Being cross-examined he stated that affidavits relating to these workmen were received in 1986 or 1987 in the Project Office but he could not say how many out of the said 32 workmen were living by the time affidavits were received. WW-7 filed a statement showing details of retrenchment of the 32 workcharged staff in 1965 who had been working in the former Mathili Sub-division of Malkangiri Construction Division, prepared on the basis of examination of records produced by the Management in this proceeding marked as Ext. DDD and Ext. EEE. Being cross-examined he stated that 42 workmen came on transfer to Dandakaranya Project from the Government of Orissa which fact he has heard. He could not say if there were documents evidencing the aforesaid. He denied the suggestion made to him that only five out of the aforesaid workmen joined the Project and not others. These five to six workmen approached the Executive Engineer of the Project at Malkangiri demanding compensation and 32 workmen filed affidavits claiming compensation. At this stage I may refer to Ext. DDD, which is a letter issued by the Office of the Executive Engineer, Construction Division, Malkangiri to the Executive Officer (Administration), Project Headquarters, Koraput on the joint representation of the Ex-Khalasis of Mathili Sub-Division for payment of retrenchment compensation. In this letter it is mentioned that alongwith the Kota-Malkangiri road which was transferred by the Government of Orissa, 40 workmen came to work in the project. On 30-11-65 24 out of them were retrenched with effect from 31-12-65 by the Assistant Engineer (Construction) Mathili by his letter dated 30-11-65 and out of them only 15 complained about non-payment of compensation. It was also mentioned in Ext. DDD that only five names were found common in the three groups of workers referred to above and they are Gora Maihi, Narayan Majhi, Bhagirathi Raghu (Bhimia) and Bhagirathi. MW-3, the Executive Engineer, Construction Division of the Project stated in his

evidence that the Government of Orissa entrusted to the D.D.A. the work of development of the Malkangiri and the Kota-Malkangiri road in 1958. There were 40 labourers on consolidated pay who had been working under the State Government at Malkangiri. They were transferred to the D.D.A. The D.D.A. decided not to take up work in Malkangiri zone first and thereafter, those 40 labourers became surplus and were retrenched in 1965. He admitted that no compensation was paid to them at the time they were retrenched or thereafter.

Thus, on the basis of the evidence of MW-3 considered alongwith Ext. DDD and Ext. EEE it can be safely concluded that there had been retrenchment of workcharged employees who came on transfer to the D.D.A. from the employment of the State Government but without they being paid retrenchment compensation as required by Section 25-F of the Industrial Disputes Act. Thus, their retrenchment was illegal. There is however, dispute about the identity of such persons who have been retrenched. Some of them are stated to have been dead. Whereabouts of some are not known. The dispute relating to them was raised long after. There is possibility of impersonation of such people. In the circumstance, I think, while declaring the retrenchment of these workmen brought about in the year 1965 to be illegal, I would hold that in case they establish their identity, each of them could be paid consolidated compensation of Rs. 5,000 which would meet the ends of justice.

Item No. 10 :

31. The last item of dispute relates to the question of withdrawal of superannuation in respect of a Work Assistant, named, Dayanidhi Pattnaik.

So far as this item of dispute is concerned, it is the case of the second party that Sri Pattnaik's date of birth was recorded in his service book as 10-4-1919. Sri Pattnaik, however, produced a School Leaving Certificate which showed his date of birth to be 1-10-1924. On the basis of the date of birth recorded in his School Leaving Certificate he was to retire on 30-11-1982. He was, however, retired on 1-5-1979. The second party's claim is that the date of birth as recorded in his School Leaving Certificate which is authentic, he should have been allowed to continue till 30-11-1982.

The plea of the First Party in connection with this dispute as would appear from the written statement filed by them is that at the time of his appointment as a Work Assistant in 1984, Sri Pattnaik produced a certificate which he had obtained from the D.S.S.A. Board (Soldier Board), Ganjam, wherein his date of birth had been recorded as 10th April, 1919. Accordingly, on 1-7-1978, he was intimated by the D.D.A. that on attaining the age of superannuation (60 years) he would retire from service with effect from 30-4-1979. On 20-4-1979, Sri Pattnaik produced a School Leaving Certificate allegedly obtained by him on 15-4-59 from the Headmaster of N. D. High School, Purushottampur, Ganjam showing his date of birth to be 1-4-1924. Sri Pattnaik was asked to produce the original certificate from the D.S.S.A. Board but he replied that he had lost the same in the year 1961 in a fire accident. It was found on scrutiny that the certificate which had been allegedly issued by the Headmaster of N.D. High School, Purushottampur, Ganjam on 15-4-1959 had been written on a form printed by the Orissa Government Press on 10-1-1967. The matter was then referred to the Secretary to the Government of Orissa, Education and Youth Services Department, Bhubaneswar, with a request that the matter should be enquired into. The Education Department got the matter enquired through their Inspector of Schools and sent the report submitted by the Inspector of Schools to the D.D.A. which revealed that no such person called Dayanidhi Pattnaik had been admitted to N. D. High School on 26-5-1936 nor any transfer certificate was issued to him from the said School on 15-4-1959. It was stated in the written statement that the certificate in question was a forged one. Thus, since the certificate was found to be forged, Sri Pattnaik's representation was rejected and he was relieved from service on 1-5-1979 on superannuation.

Sri Dayanidhi Pattnaik, who was examined in this proceeding, WW-6 stated that he joined the employment of Dandakaranya Project on 29-5-1959. Two to three years thereafter, his Service Book was opened and at that time the Management called for his certificates. He was an Ex-Military man and he produced before the Management a

certificate granted to him by the Soldier Board as his School Leaving Certificate was not then available. In that certificate his date of birth had been recorded as 1-10-24. In his Service Book, however, his date of birth was recorded as 1-10-19 and 24 was omitted. He was retired on 30-4-1979. He stated that 15 days prior to 30-4-1979 a notice was served on him by the Management asking him to retire on 30-4-1979. He then represented to the Chief Administrator and other authorities stating that he was not to retire on superannuation on 30-4-1979. According to him, the Management never intimated him nor asked him to explain that the certificate produced by him was a forged one. No enquiry was conducted by the Management about the genuineness of the certificate to his knowledge. Being cross-examined he stated that the School Leaving Certificate he had produced was an original certificate and not a duplicate one. The School Leaving Certificate has been marked in this proceeding as Ext. FFF. He admitted that when he was recruited to the Military in 1942, he did not produce any School Leaving Certificate. The Recruiting Officer asked him his date of birth and he told him that it was 1-10-24. He stated that at the time of his discharge from the Military service in 1947, he was given a discharge certificate but the same has been destroyed by fire. He also stated during his cross examination that when he joined the Dandakaranya Project he approached the Soldier Board to issue to him a certificate. He was asked by the Soldier Board to state his date of birth and he told them that his date of birth was 1-10-24 and accordingly they issued him a certificate. He stated that the certificate Ext. FFF had been signed on 15-4-1959. He further stated that when he produced the certificate Ext. FFF before the Management he was not told that it was a forged certificate having been issued on a form printed by the Orissa Government Press in 1967.

A copy of the D.O. letter dated 22-3-1980 from the Inspector of Schools, Ganjam Circle to the Dy. Secretary to the Government of Orissa, Education Department regarding allegation against the Headmaster, N.D. High School, Purusottampur has been produced and marked in this proceeding as Ext. VV. In this letter the Inspector of Schools, Ganjam Circle informed the Government of Orissa, Education Department that he enquired into the matter and found that no person called Dayanidhi Pattnaik S/o Duli Krishna Pattnaik of Mangalpur, District Ganjam was admitted to the N.D. High School on 25-6-1936 and was issued with the transfer certificate on 15-5-1959 from the said School. As such, the Transfer Certificate was found to be a forged one.

I myself examined the original Transfer Certificate Ext. FFF on which reliance was placed by Sri Pattnaik and also the second party. The said certificate has been written on a form printed in the Orissa Government Press on 10-1-67. In the circumstances, there can be no escape from the finding that the certificate purported to have been signed by the Headmaster, N.D. High School, Purusottampur on 15-4-1959 is a forged one. Consequently, I would hold that Sri Pattnaik has been rightly retired from service on superannuation on the due date and the said order cannot be withdrawn.

32. In this proceeding the First Party-Management was represented by Dr. K. S. Rao, Officer-in-charge, Zonal Administrator of the Dandakaranya Project, Koraput and the second party was represented by Sri B. B. Das, President of the Rehabilitation Employees' Union, Koraput, who is at present a practising Advocate. It was expected that they should lead evidence in this proceeding in a neat manner but evidence adduced in the case have been cumbersome. Several documents were filed and exhibited, most of which are irrelevant by which the parties themselves got confused.

The single reference made to this Tribunal contained several items of disputes requiring adjudication. The disputes mostly were distinct disputes having no nexus with each other. For example, the disputes regarding regularisation, reinstatement and stoppage of retrenchment of Muster Roll workers were different and distinct from the dispute relating to grant of permanency in service to Sri B. B. Das, the President of the Union pursuant to his letter withdrawing the resignation he had tendered and the dispute about waiving of the rent claimed from him for unauthorised occupation of the quarter allotted to him by the D.D.A. Similarly, the dispute regarding reinstatement and back wages to Sri P. K. Swain and some others and the withdrawal of superannuation order in respect of a workman named Sri Dayanidhi Pattnaik are distinct and

different disputes. Reference of such a bunch of disputes having nothing in common for adjudication in one proceeding created a lot of confusion for the parties and also for the Adjudicating Authority. It is hoped that the concerned Department of the Ministry of Labour, Government of India will keep this aspect in view while making reference.

S. K. MISRA, Presiding Officer
[No. I-42025/1/88-D.II(B) (Pt.)]

नई दिल्ली 4 जनवरी 1990

का. आ 162:—श्रीधारिक विश्वास अधिनियम, 1947 (1947 का 14) को धारा 17 के प्रमुखण में केंद्रीय सरकार द्वा इन्डिया एयर ब्राउंस 33A के तहत उत्तर भारत प्रगति के विषय की गई एक गिरावट पर अनुच्छेद में नियंत्रित केंद्रीय सरकार श्रीधारिक अधिकरण कानपुर के पंचपट को प्रत्याखिन करती है जो केंद्रीय सरकार के 19-12-89 को प्राप्त हुआ था।

New Delhi, the 4th January, 1990

S.O. 162.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur in respect of a complaint u/s. 33A of the said Act filed by Indrajeet and others against the management of Northern Railway Adm., Lucknow which was received by the Central Government on the 19-12-89.

ANNEXURE

BEFORE SHRI ARJAN DEV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
PANDU NAGAR, KANPUR-208005

Industrial Dispute No. 117 of 1988

In the matter of dispute between :

Shri Indrajeet and others C/o Shri B. D. Tewari,
96/196 Roshan Bajaj Lane, Ganesh Ganj,
Lucknow.

AND

Northern Railway Administration, Hazaraganj, Lucknow (U.P.).

AWARD

1. This is an application under section 33-A of the Industrial Disputes Act, 1947, by 5 workmen, namely, S/Shri Indrajeet, Laxmi Prasad, Jainath, Omprakash Srivastava and Shri Ram Sanehi. Their grievance is that their services were terminated by the Railway Administration during the pendency of I.D. No. 59/86 in contravention of the provisions of Section 33-A I.D. Act, 1947. They have therefore, prayed that the action be taken against the Divisional Railway Manager, Lucknow, by setting aside the said illegal order of termination of their services w.e.f. 12-7-88.

2. The Railway Administration have denied that they terminated the services of any casual labour/substituted porter. The management plead that the services of casual labour/substitute porter are utilised against casualties. The application moved by these five workmen is therefore, not maintainable at all.

3. A rejoinder has been filed in this case in the form of affidavit sworn by Shri Inderjeet, one of the applicant, in which he has deposed facts only about him. He has alleged that he was a box porter. He was told not to come on duty after 12-7-88 i.e. during the pendency of I.D. No. 59/86. Thus his services have been terminated when the work is still in progress and about 200 juniors and non empanelled hands out of which a list of 95 names is enclosed are working. These persons were recruited in the year 1983. Thus the jobs still exist inasmuch as 16 posts of box porter are still lying vacant. However, consequent upon screening some porters have been regularised and postings given to them.

4. In support of their case, applicants have placed reliance on the affidavit of Shri Inderjeet Singh and one documents

was filed with the rejoinder and in support of their case, the management have relied upon the affidavit of Shri Kiranchandra, the dealing assistant and one document. From the side of the applicants, the affidavit of Shri Ram Bhajan who was one of the workmen involved in I.D. No. 59/86 was also filed but he was not examined in the case by the applicants.

5. Vide notification No. L-41012/35/85-17.II(B) dated 17-3-86. The Central Government, Ministry of Labour, referred two industrial disputes one of which reads as under to this Tribunal for adjudication :

Whether the action of the D.P.O. N. Rly. in not regularising the services of the 15 workmen employed as substituted porters is proper and justified If not to what relief these workmen are entitled?

The list of 15 workmen included the names of the present 5 applicants and even the name of Shri Ram Bhajan whose affidavit was filed by the applicant in support of their case in the present case. On the reference order I.D. No. 59/86 was registered. Award in I.D. No. 59/86 was given by this Tribunal on 24-10-88. After considering the facts and evidence, it was held by this Tribunal that out of these 15 workmen the services of 10 workmen have been regularised on account of their having got through the screening test and the services of the remaining 5 workmen who are no other than the present applicant have not yet been regularised as they did not appear in the screening test. Therefore, in respect of 10 workmen whose services have been regularised, the reference has become infructuous. About the present 5 workmen it was observed that they were entitled to regularisation of their services only when they passed the screening test. In order to protect rights of these five workmen a direction was given to the Management to give another chance to them for appearing before the Screening Committee for screening test. Whenever such a test is held by the Screening Committee next time.

6. From para 4 of the affidavit of Shri Inderjeet it appears that he was a box porter. In para of his statement in cross examination he has deposed that he was a substitute. In other words according to him he was a substituted box porter. Although no specific case has come so far as remaining 4 workmen are concerned, but their position would also be no other than that of substituted porter. The position of substitute is no better than that of a casual labour who is entitled to work only as and when work is available and this will also be evident from the facts stated in the claim statement filed in I.D. No. 59/86. In the said claim statement in respect of the 15 workmen their dates of appointment and the number of working days are given. The details given with respect to the 5 applicants are :—

S.I.N.	Name	Date of appointment	working day,
1.	Sh Om Prakash	26-6-77	800
2.	Sh. Ram Sanchi	27-1-77	500
3.	Sh. Inderjeet	19-7-77	945
4.	Jainath	31-7-77	1000
5.	Laxmi Prasad	9-3-77	725

The claim statement was filed on 3-4-86. Thus it is clear that after their initial appointment they did not work continuously rather they worked intermittently.

7. In para 2 of his affidavit Shri Inderjeet has referred to the facts that when his services were terminated from 12-7-88, about 200 juniors and non empanelled hands out of which a list of 95 names is enclosed are still working. The same list was also filed in I.D. No. 59/86 and with regard to it I observed as follows in para 18 of the award :—

".....With regard to the list of leave reserved porters. Shri Ram Bhajan, has stated in his cross examination that the said list was delivered to him by the dealing clerk Shri Lal Chand. He admits that the list does not bears the signature of Shri Lal Chand. He even admits that there is nothing to show as to in whose name the list has been endorsed. Thus

he has stated that in respect of some of the leave reserved porters the names of their fathers are not given. He also admits that the list does not show as to when these leave reserved porters were recruited/appointed and how and in what circumstances their recruitment was made. In the circumstances, these 15 workmen cannot be said to have any case against these said leave reserved porters who are said to have been recruited even after ban on recruitment. It could be that they also might have been pre 1-6-78 appointees whose services had been terminated illegally and thereafter re-engaged after realisation of the mistake by the management."

This list of 95 persons was filed by Shri Ram Bhajan with his second affidavit dated 20-10-86. In the instant case with regard to this list Shri Inderjeet has deposed that he went to the office and there he noted down their names. He then got it typed and got prepared the photo stat copy which has been filed by him in the present case. He admits that in the record from which he prepared the said list dates of their initial recruitment were not given. I fail to understand how in the circumstances it can be said that all these 95 persons are junior to the present five applicants. There is no other base for him to call them as juniors.

8. How truthful Shri Inderjeet is can be judged from the fact deposed to by him in para 5 of his statement in cross-examination. He says that they were 15 persons out of which 10 of them passed the screening test and they were given regular jobs. The names of the remaining 5 persons, who are no other than the present applicants did not appear in the notice pasted on the notice board, in which the names of those who were called for screening test were given. Now let us see what Sh. Ram Bhajan has stated in witness box in I.D. No. 59/86 I refer to a extract from para 20 of the award given in I.D. N. 59/86 which reads as under :

With regard to Shri Om Prakash, Ram Sanchi, Inderjeet Jai Nath and Laxmi Prasad he has deposed in his cross examination that their names also appeared in the list displayed on the notice board of the office of the Supdt. in the DRM Office Lucknow with the direction that all those named in the list should appear before the screening committee...."

Thus prima facie the present five applicants have no case at all. They were not permanent or temporary employees of the railways, as observed earlier their position as substitute box porter was no better than that of casual labour. Even if it be believed that they were not given any work from 12-7-88 or 13-7-88, that would not amount to any saying that their services have been terminated by the management. Being substitute porter they were to be given work only when some permanent box porter was found absent from duty or one reason or the other.

9. During his cross examination the management witness was asked about the position of box porter at Lucknow Rly Station. He replied that all the box porters working at Lucknow Rly. Station are permanent. He has also stated that some leave reserved porters the number of which he cannot tell are also working at the station. According to him presently there is no vacancy of box porter at Lucknow Rly. Station.

10. Thus I find that the applicants have no case at all. If after 12-7-88 they stopped going to the place of work where they used to get duty as substitute, the railway administration cannot be blamed for it.

11. Hence, I find no force in this application, under section 33-A I.D. Act which is dismissed accordingly.

3-11-89.

ARJAN DEV, Presiding Officer
[No. Z-13011/2/89-JR(DU-1]
HARI SINGH, Deak Officer

नई दिल्ली, 26 दिसम्बर, 1989

का. आ. 163 :-प्रौद्योगिक विवाद प्रशिनियम् 1947 (1947 का 14) की आरा 17 के अनुसार संक्षेप सरकार द्वारा मैसर्ज आएँ

कोकिंग कॉल. लिम. की किंटीरिया कॉलियरी के प्रबंधित के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निविष्ट आयोगिक विवाद में केंद्रीय सरकार आयोगिक अधिकारण, करक्ता के प्रवाट को प्रकाशित करती है जो केंद्रीय सरकार को 22-12-89 को प्राप्त हुआ था।

New Delhi, the 26th December, 1989

S.O. 163.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Victoria Colliery of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on 22-12-89.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 6 of 1988

PARTIES :

Employers in relation to the management of Victoria Colliery of M/s. Bharat Coking Coal Limited.

AND

Their workmen

PRESENT :

Mr. Justice Sukumar Chakravarty—Presiding Officer.

APPEARANCES :

On behalf of employers—Mr. B. N. Prasad, Advocate.

On behalf of workmen—None.

STATE : West Bengal.

INDUSTRY : Coal.

AWARD

By Order No. L-19012/52/86-D.IV(B) dated 23rd January, 1987, the Government of India, Ministry of Labour referred the following dispute to this Tribunal for adjudication.

"Whether the action of the Management of Victoria Colliery of M/s. B.C.C.Ltd., in terminating the services of Shri Kisto Mochi and 20 other workmen as per Annexure-A below, is justified? If not, to what relief the workmen concerned are entitled?"

ANNEXURE 'A'

1. Kisto Mochi
2. Raja Mallik
3. Onta Mochi
4. Bhowri Mollik
5. Budban Singh
6. Lakshman Mondal
7. Nemai Manjhi
8. Sonat Bauri
9. Shanti Manjhi
10. Sahadeb Modhi
11. Madan Mohan Ghosh
12. Sumia Meihain
13. Mallo Meijian
14. Sanatan Manjhi
15. Hara Manjhi
16. Md. Hafiz Hossain
17. Shanti Karmakar
18. Shanker Mochi
19. Md. Allaudin
20. Ganesh Lal and
21. Bejoy Manjhi

2. When the case is called out today, Mr. B. N. Prasad, Advocate appears for the Management. Nobody appears for the Union. A petition has however been received from the Union stating that the Union is not interested to proceed

with the present reference and the Union prays for a "No Dispute Award". Mr. Prasad appearing for the Management has no objection in this regard.

3. On due consideration of the petition of the Union as well as the submission of Mr. Prasad appearing for the Management, I find that this Tribunal has no other alternative but to pass a "No Dispute Award" and accordingly a "No Dispute Award" is passed.

This is my Award.

Dated, Calcutta,
The 14th December, 1989.

SUKUMAR CHAKRAVARTY, Presiding Officer
[No. L-19012(52)/86-D.IV-B/IR(C. II)]

नंद दिल्ली 26 दिसम्बर, 1989

का. अ. 164.—आयोगिक विवाद प्रतिनियम, 1947 (1947 का 14) का धारा 17 के अनुसार में केंद्रीय सरकार व सिंगरानी कॉलियरीज कं. लिम. बेलमपल्ली के प्रबंधित के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निविष्ट आयोगिक विवाद में आयोगिक अधिकारण, हीराबाद के पचपट को प्रकाशित करती है जो केंद्रीय सरकार को 21-12-89 को प्राप्त हुआ था।

S.O. 164.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the following award of the Industrial Tribunal, Hyderabad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Singareni Collieries Co. Ltd., Bellampalli and their workmen, which was received by the Central Government on 21-12-89.

ANNEXURE BEFORE THE INDUSTRIAL TRIBUNAL AT HYDERABAD

PRESENT :

Sri C. Rami Reddy B.Ss., B.L., Industrial Tribunal.
Dated : 5th December, 1989

Industrial Dispute No. 9 of 1987

BETWEEN :

The Workmen of S.C. Co. Ltd., P.O. Bellampalli, Dist. Adilabad (A.P.).

AND

The Management of S.C. Co. Ltd. P.O. Bellampalli, Dist Adilabad.

APPEARANCES :

Sarvashri A. K. Jayaprakash Rao, P. Damodar Reddy, V. Narasimha Goud and Ch. Laxminarayana, Advocates for the Workmen.

Sri K. Srinivasa Murthy and Miss G. Sudha, Advocates for the Management.

AWARD

The Government of India, Ministry of Labour by its Order No. L-21012/67/86-D.III(B) dated 12-2-1987 referred the following dispute under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 between the employers in relation to the Management of Singareni Collieries Company Limited, P.O. Balampalli and their workmen to this Tribunal for adjudication.

"Whether the action of the management of Singareni Collieries Co. Ltd. in terminating the service of Shri Mudimadugula Ankuloo, General Mazdoor, Power House, Bellampalli by removing his name from the rolls of the company on 19-5-82 is justified? If not, to what the workman is entitled?"

This reference is registered as Industrial Dispute No. 9 of 1987 and notices were issued to the parties.

2. The claim statement briefly runs as follows :
The Workman Sri Mudimadugula Ankuloo, General Mazdoor,

Power House is a Member of the Petitioner Union. He was appointed as General Mazdoor under the Respondent and he has worked continuously from the date of his appointment till he was illegally terminated by the Respondent from 19-5-1982. The workman was sick and he was undergoing treatment in the Hospital of the Respondent Company from 24-4-1982 to 8-5-1982. The workman intended to report for duty on 9-5-1982 but he was arrested by the Police on 9-5-1982, by falsely implicating him in S.C. No. 106 of 1982 on the file of the Assistant Sessions Judge, Adilabad. He was released on bail on 25-9-1982 and when he reported for duty he was informed by the Respondent-Company that his services were terminated involving Clause 11(c) of the Standing Orders and his name was struck off from the muster rolls. He was acquitted in S.C. No. 106/82 to Assistant Sessions Judge, Aliabad on 17-8-84. It is submitted that the action of the Respondent-Company in striking off the name of the workman from the muster rolls from 19-5-82 amounts to retrenchment within the meaning of Section 2(oo) of the I.D. Act and the order of termination is in violation of Section 25 of the I.D. Act, as the Respondent-Company has failed to give any notice. Notice pay and retrenchment compensation as contemplated under Section 25F of the I.D. Act. Thus the order of termination is illegal, invalid and it is in violation of mandatory provisions of Section 25F of the I.D. Act. The workman is deemed to be in service of the Respondent Company. The workman could not secure any alternative employment and he remained unemployed from the date of the termination. Hence it is prayed for setting aside the order of dismissal as illegal and for granting the relief of reinstatement with continuity of service, full back wages and all attendant benefits.

3. The Management filed a counter briefly as follows:—The allegation that the workman worked continuously from the date of his appointment till the date when he was terminated by the Respondent-Management on 19-5-1982 is not correct. The Respondent Company is a public sector undertaking and it is declared by the Government as Public Utility Service. The Workman was appointed on 28-5-1979 as General Mazdoor. His service record shows that he was absenting unauthorisedly without following the leave rules for applying for any leave on several occasions. He reported sick in the Respondent Hospital from 25-4-1982 to 9-5-1982. According to the procedure of the Company, the employee should report sick at the Hospital, or required to attend the Hospital on alternate days for treatment. The workman reported upto 9-5-1982 for treatment and later on without any communication he has not chosen to report nor applied for leave nor for the extension of sick leave. The Respondent has no knowledge under what circumstances the Petitioner has not chosen to report for duty from 9-5-1982. The Respondent has also no knowledge as to why the Police filed a case against the workman in S.C. No. 106/82 and what happened to the criminal case. The Respondent has also no knowledge when the workman was released on bail. Even it is said that the workman was falsely implicated in the criminal case as correct, the workman ought to have written a letter to the Management explaining the circumstances for his absence. Since the workman failed to report for duty, action has been taken by the Management as per the Standing Orders of the Company. It is pertinent to submit that there was heavy absenteeism and unauthorised absenteeism and that the order to reduce the absenteeism and also to give relief to the workman, the Management entered into a settlement with the Unions on 29-1-1981 under Section 12(3) of the I.D. Act. According to those Settlements, in those cases where the Management took action for unauthorised absence for more than 10 days and if the employees approach the Management within a period of one year, they should be provided employment as "badli". It may be noticed that the workman in dispute has not chosen to report for duty within one year. The allegation that after immediately released from bail on 25-9-1982 he reported for duty is totally false and he is put to strict proof of the same. The workman has not taken any action from 9-5-1982 to 17-8-1984 to join duty. For the first time the workman approached the Conciliation Authorities in the year 1985 i.e. after a lapse of 3-1/2 years and he had chosen to raise the dispute with regard to the action taken by the Management as per the Standing Orders. The interpretation that the action taken by the Management comes within the meaning of retrenchment under Section

25F of the I.D. Act and as such he is entitled for the compensation under Section 25F of the I.D. Act, is not correct. As the workman had abandoned the services of the Company without any intimation, the question of Management treating his termination as retrenchment and paying compensation does not arise. The Settlement dated 29-1-1981 is binding on the Petitioner-Union as well as the workman in dispute. The workman has not reported for duty within a period of one year as provided in the terms of Settlement. Thus the workman cannot claim any benefits or rights under Settlement dt. 29-1-1981. The allegation that the workman was without any employment ever since the date of his termination and that he could not secure any alternative employment is not correct. The reference itself being belated and stale one, is bad in law. The workman in dispute is not entitled for any reinstatement, continuity of service with full backwages and with attendant benefits as prayed for in the claim statement.

4. The points for determination are as follows :

- (1) Whether the action of the Management in removing the name of the workman on the rolls on 9-5-1982 amounts to retrenchment within the meaning of Section 2(oo) of the I.D. Act warranting the Management to follow the procedure laid down under Section 25F of the I.D. Act ?
- (2) Whether the reference is belated and stale one liable for rejection ?
- (3) Whether the workman is bound by the settlement dated 29-1-1981?
- (4) To what relief ?

5. The Workman examined two witnesses besides marking Exs. W1 to W6. W.W1 is the workman in dispute. W.W2 is Secretary of the Petitioner-Union which has espoused the cause of the workman. W.W1 deposed that he is the member of the Petitioner Union, that he received injury to the left-hand thumb on 24-4-1982, that he was treated as out patient in the Respondent Hospital from 24-4-1982 to 8-5-1982; that he was arrested by the Police on the night of 8-5-1982 under suspicion, that he was released on bail on 24-5-1982; that he was tried in S.C. No. 106/82 on the file of the Assistant Judge Asifabad and that he was acquitted on 17-8-1984. Ex. W1 is the order dt. 25-9-1982 of the Superintendent District Jail, Nizamabad stating that the workman in question was released on bail on 25-9-1982 as per the orders of the Munsiff Magistrate on 24-9-1982. Ex. W2 is the committal warrant showing that the workman in question was committed to judicial custody on 14-9-1982 in S.C. No. 106/82. Ex. W3 is the Remand Case Diary Report dt. 17-5-1982 showing the arrest of the workman on 17-5-1982. Ex. W4 is the certified copy of the judgement in S.C. No. 106/82 dt. 17-4-1984 acquitting the workman in question. The workman filed the above documents. Further he stated that on 25-9-1982, he came to know that he was removed from service that on that day he went and enquired in the office and he was informed about his removal from service from 19-5-1982. Further he stated that he was not given any notice before removing him from service, that after the acquittal of the criminal case he approached the Management and requested them for reinstatement that the Management did not reinstate him in service and that he also gave written representation to the Management in this regard.

6. W.W2 is the General Secretary of the Union. He stated that the Union gave a representation Ex. W5 on behalf of the worker to the Assistant Commissioner of Labour for conciliation, that conciliation failed, that Ex. W6 the report of the failure of conciliation proceedings.

7. As against the above evidence, the Management examined one K. V. Subba Rao working as Deputy Personnel Manager as M.W.1 and filed Exs. M1 to M9 on the side of the Management.

8. Point 1:—Admittedly the workman was appointed as General Mazdoor from 28-5-1979 as seen from the appointment order Ex. M1. The case of the workman is that he reported sick from 24-4-1982 to 8-5-1982 and that he took treatment in the Management Hospital for the said period. However the case of the Management as given to by M.W1 is that the workman reported sick in the Management Hospital from 25-4-1982 to 9-5-1982 and that thereafter without

any communication, the workman has chosen not to report at the Management-Hospital nor applied for leave for extension of sick leave. The workman stated in the claims statement that he intended to report for duty on 9-5-1982, that he was arrested by the Police by falsely implicating him in S.C. No. 106/82. The workman stated in the evidence that he was arrested by the police on the night of 8-5-1982 and that he was released on bail on 25-9-1982 Ex. M5 in the letter dated 1-12-1987 written by the workman to the management requesting for re-appointment as a General Mazdoor. The workman stated in the Ex. M5, that he was in the accident report from 24-1-1982 to 9-5-1982. In the light of Ex. M5 it has to be held that he was on sick leave upto 9-5-1982 as stated by the management. Ex. W3 in the certified copy of the remained case diary in S.C. No. 106/82 filed by the workman. It shows that the workman was arrested on 17-5-1982 and he was remanded to judicial custody on 19-5-1982. Thus Ex. W3 supports the case of the workman in order to show that he was arrested on 9-5-1982 as stated by him in the claims statement. Ex. W1 is the certified copy of order of Superintendent, District Judge, Nizamabad showing that the workman was released on 25-9-1982 on bail as per the order of Munsiff Magistrate, Chennu, dated 24-9-1982. It is clear from Ex. W3 and Ex. W4 that the workman was arrested by the Police due on 17-5-1982 and that he was released from the District Jail, Nizamabad on 25-9-1982.

9. Whatever the reasons may be, it is clear that the workman did not report for duty from 9-5-1982 to 25-9-1982. It may be relevant to state that it is not the case of the workman that he applied for extension of sick leave from 9-5-1982 onwards. It is the case of the workman that after his release on bail on 25-9-1982 he reported for duty and that he was informed by the Respondent Management to the effect that his services were terminated by invoking Clause 11(c) of the Standing Orders. The Management flatly denied the reporting of duty by the workman on 25-9-1982 as contended by the Workman. On the other hand the Management witness stated that subsequent to 9-5-1982, the workman wrote a letter dated 30-5-1984 marked as Ex. M3 requesting the management to allow him for joining the duty and that there was no information whatsoever about the workman from 9-5-1982 till the receipt of the letter dt. 30-5-1984 by the Management. I am inclined to agree with the case of the Management in this regard. Had the workman reported for duty on 25-9-1982 as contended by him, he would have mentioned the said fact in the letter dt. 30-5-1984 (Ex. M3). It is significant to note that it is not the case of the workman in Ex. M3 that he reported for duty on 25-9-1982. On the other hand the case of the workman that Ex. M3 is, that he was under treatment from 10-5-1982 to 3-5-1984 at the Government District Headquarters Hospital, Karimnagar. Further he enclosed xerox copy of Medical Certificate issued by the Civil Assistant Surgeon, Government Hospital, Karimnagar to his letter dt. 30-5-1984 (Ex. M3) in support of the sickness pleaded by him in Ex. M3. In the above discussion, it is stated that the workman was released on bail on 25-9-1982 from the District Jail, Nizamabad as Ex. W1. The place of working of the workman is at Bellampalli. It is difficult to say that the workman would have gone to Bellampally from Nizamabad for reporting for duty on 25-9-1982 since that both the places are not nearby places. Having regard to the above, I am not inclined to believe the oral evidence of the workman in regard to his reporting for duty on 25-9-1982. Further Ex. M3 clearly go to show that he intended to join duty subsequently to 30-5-1984 only, but not earlier. It may be stated that it is the case of workman in Ex. M3, that he was under treatment of Government Medical Officer, Karimnagar from 10-5-1982 to 3-5-1984. From the above, it is clear that the workman did not report for duty from 9-5-1982 to 30-5-1984 without applying or extension of leave. The case of the Management is that overstayal of leave by the employee working under the Management is covered by Clause 11(c) of the Standing Orders, that as per Clause 11(c) of the Standing Orders, the workman in question lost his lien on his appointment and so his name was removed from the roll w.e.f. 19-5-1982, that the removed of the workman from the rolls of the Company does not amount to retrenchment as

defined under Sectin 2(oo) of the I.D. Act and that Section 25(F) of I. D. Act is not applicable on the other hand the learned counsel for the workman argued that the striking off the name of the workman from the rolls in terms of Standing Orders also amounts to retrenchment and such termination without compliance with the provisions of Section 25F of the I.D. Ac renders the termination void ab initio and in operative. Reliance is placed on the following Supreme Court decisions (1) State Bank of India v. M. Sundermomin 1976 (1) LLJ, page 478] (2) Delhi Cloth Mills Co. Ltd. v. Shambhu Nath Mukherjee [1978 (1) LLJ, page 1]. In Sundera Money's case it was held "termination embraces not merely the act of termination by the employer but the fact of termination however produced". In Delhi Cloth Mills Company Limited case their Lordships were considering the case whereunder the Standing Order of the Company and certain contingencies, the name of the worker was automatically struck off the rolls. It was held that striking of the name of workman from the rolls amounts to retrenchment within the meaning of Section 2(oo) of the Act requiring mandatory compliance of Section 25(a) and (b) of the Act. Reliance is also placed on the decision of the Patna High Court reported in 1985 (1) LLJ, page 74 (Deshraj Sood v. Industrial Tribunal & Ors.) wherein by was held whether the termination is brought about by voluntary or involuntary action whether that is produced by over act or by operation of the provisions of Standing Orders, the termination would be retrenchment within the meaning of Section 2(oo) of the Act and that termination without compliance with the provisions of Secon 25F renders the termination void ab initio and inoperative. The decisions of the above two Supreme Court cases were relied upon by Patna High Court to come to the said findings. Thus it is urged on behalf of the workman that the termination of the workman in question in terms of Standing Orders 11(c) amounts to retrenchment and that the said termination is void for the reasons of noncompliance with the provisions of Section 25F of the I.D. Act. I am inclined to agree with the above contention of the workman since the said contention is supported by the above decisions. There is no dispute that Clause 11(c) of the Standing Orders of the Company were invoked by the Management in removing the workman from the rules of the Company consequent on the loss of lien. Admittedly the Management has not complied with the provision of Section 25F of the I.D. Act. As per the decision cited above such termipation is void ab initio and inoperative. Thus the point is answered in favour of the workmen.

10. Point No. 2 : In the discussion on Point 1 it is held that the workman in question remained absent without applying for leave or for extension of leave from 9-5-1982 onwards and that he applied for permission to join duty for the first time in his letter dt. 30-5-1984 (Ex. M3), which the Management received on 4-6-1984 as seen from the seal of the Management found on Ex. M3. Ex. W5 is the representation dated 26-8-1985 given by the Union on behalf of the Workman to the Assistant Commissioner of Labour to intervene in the matter for the reinstatement of the workman in question. Thus the claim of the workman was agitated for the first time on 26-8-1985 for the unauthorised absence of the workman from 9-5-1982. The contention of the Management is that having kept quite for 3-1/2 years, the workman has chosen to raise the dispute and that the claim of the workman being belated and stale, ought not to have been referred for adjudication and so the reference is bad in law. Reliance is placed on the decision of our High Court reported in 1964 (I) LLJ, page 622 (Vazir Sultan Tobacco's case). In that case the dispute in regard to the dismissal of an employee was referred for adjudication after 4 1/2 years and a writ prohibition was issued directing the Labour Court not to proceed with the reference. The Court observed that inordinate delay in making the reference was both unreasonable and unjustified. In that decision reliance was placed on the decision of the Supreme Court reported in 1959 (II) LLJ, page 26 (Shalimar Works Ltd. Their Workmen) wherein it was held as follows :

"It is true that there is no limitation prescribed for reference of dispute to the Industrial Tribunal even so it is only reasonable that the dispute should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to

workmen wholesale as in this case..... We are of the opinion that in this particular case the dispute was not referred for adjudication within a reasonable time as it was sent to the Industrial Tribunal more than four years after even reemployment of most of the old workman. We have also pointed out that it was open to the workman themselves even individually to apply under Section 33-A in this case but neither that was done by the workman nor was the work done for adjudication within a reasonable time. In these circumstances we are of the opinion that the Tribunal would be justified in refusing the relief of reinstatement to avoid the discussion of the industry and that is the correct order to make."

I am inclined to agree with the above contention of the Management. In the present case the workman has not come with clean hands. It is the case of the workman both in the claim statement as well as in evidence that he was arrested by the Police in connection with the case in S.C. No. 106/82 and that he was released on bail on 29-5-1982 and that he was acquitted in the said case on 17-8-1984. He filed the judgement showing the acquittal as Ex. W-4. In the representation dated 30-5-1984 (Ex. M-3) he suppressed the facts of the involvement in the criminal case. On the other hand he stated in Ex. M-3 that he was under treatment from 10-5-1982 to 3-5-1984 in the District Headquarters Hospital, Karimnagar. He also enclosed the Xerox copy of the Medical Certificate marked as Ex. M-4 in support of the same. He admitted in the cross examination in that he cannot explain why different versions and different reasons was given by him at different points of time of explain his absence. Further he stated in the cross examination as follows :

"As Doctor told me at Karimnagar that I will get job if I take a certificate from him. I produced Ex. M-4 certificate from Karimnagar Doctor. It is a certificate I took for my father's illness."

Thus he has given his case as stated in Ex. M-3 during the cross examination. In the circumstances I am of the view that the workman has not come with clean hands. Admittedly the workman was in jail from 25-9-1982. The criminal case against the workman ended on acquittal on 17-8-1984 as seen from Ex. W-4. In case the workman had any interest in the job, he would have certainly reported for duty on 26-9-1982 and he would have attended duty on subsequent dates also. Admittedly, he did not evince any interest to report for duty till the writing of the letter dated 30-5-1984 (Ex. M-3). He did not make any effort to raise a dispute till 26-8-1985 as seen from Ex. W-5. Thus there is unconscionable delay of more than three years and this Tribunal is perfectly justified in rejecting the reference on the ground that the reference is based on a stale claim. Point 2 is answered accordingly.

11. Point 3.—The contention of the Management is that the settlement dated 29-1-1989 marked as Ex. M-8 was entered into as per the terms of the I. D. Act, that Clause 9(a) of the Settlement deals with the cases of employees who lost lien under Clause 11(c) of Standing Orders, that the workman in question has not chosen to report within one year as is stated in Clause 9(a) of Ex. M-8 and that Ex. M-8 is binding on the workman and that the workman is not entitled to any relief. I find no merits in the said contention of the Management. It may be useful to produce Clause 9(a) of Ex. M-8 which is as follows :—

"11(c) Cases.—In future whose names have been removed under 11(c) will be entertained as Badlis only in case they approach the management within a period of one year from the date of termination. Those who do not turn up within one year will forfeit their claim to be entertained as badlis. As a special case workers who lost lien on their jobs after 1974 can approach the respective Divisional Superintendents within one month to be entertained as badlis and their cases will be considered subject to the following conditions:

- (i) They must have put in minimum satisfactory service of 6 months before they lost their lien on the job.
- (ii) They should be physically fit to be confirmed by the Medical Officers."

Clause 9(a) of Ex. M-7 applies to cases where the workman does not dispute the order passed under Clause 11(c) of the

Standing Order. In this case the workman is disputing the validity of the order passed by the Management under Clause 11(c) of the Standing Orders. Further he is not seeking the appointment as badli as per the terms of Ex. M-8. Thus Ex. M-8 has no relevance in the present case and Ex. M-8 is not applicable to the workman in question. The point is answered accordingly.

12. Point 4.—It is held on Point 1 that the workman was retrenched or terminated without compliance of Section 25F of the I.D. Act. It is also observed in the discussion on Point 1 that the workman in question was absent without applying for leave or extension of leave from 9-5-1982 onwards and that he applied for permission to join duty for the first time as per letter dt. 30-5-1984 (Ex. M-3). As per Clause 11(c) of the Standing Order, if the employee remains absent beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless he returns within ten days after expiry of leave and gives a satisfactory explanation to the Manager of his inability to return before the expiry of leave. Admittedly the workman in question did not submit any explanation within ten days after expiry of his leave explaining his inability to return before expiry of leave. Thus the Standing Order 11(c) is clearly attracted and the striking off the name of the workman from the rolls of the management is clearly justified. It is held in the decision of Madras High Court reported in 1985(2) LLJ, page 505 (MOUNT METUR PHARMACEUTICALS v. LABOUR COURT) that in cases where the Management is found to be justified in effecting retrenchment and its decision to effect retrenchment is not mala fide, the Labour Court should exercise discretion and pass instead of directing reinstatement with full back wages, an award directing a just amount of compensation, in lieu of reinstatement. The above decision is applicable to the facts of the present case. In the circumstances the workman can at best be given adequate compensation in lieu of reinstatement as laid down in the decision stated above. It is held on Point 2 that there is unconscionable delay on the part of the workman in preferring the claim, and that this Tribunal is perfectly justified in rejecting the reference on the ground that the reference is based on a stale claim. So in the light of the findings on Point 2 the workman cannot claim reinstatement.

13. In the light of the above I answer the reference as follows. The action of the Management of Singareni Collieries Company Limited in terminating the services of Sri Mudimadugula Ankuloo, General Mazdoor, Power House, Bellampally by removing his name from the rolls of the Company on 19-5-1982 is justified. However the workman is entitled for payment of one months wages towards compensation and the management shall pay the said compensation within three months from the date of the publication of the award.

Award is passed accordingly.

Dictated to the Stenographer, transcribed by him, corrected by me and given under my hand and the seal of this Tribunal, this the 5th day of December, 1989.

C. RAMI REDDY, Industrial Tribunal
[No. I-21012(67)/86-D.III.B/IR C-II]

Appendix of Evidence

Witnesses Examined
for the Workmen:
W.W.1 Mudimadugula Ankuloo
W.W.2 J. Durgaiah

Witnesses Examined
for the Management:
M.W.1 K. V. Subba Rao.

Documents marked for the Workmen

- Ex. W1—Certified copy of the order dt. 25-9-82 of Superintendent District Jain, Nizamabad.
- Ex. W2—Certified copy of the Committed Warrant in S.C. No. 106/82 signed by J.F.C.M., Chennoor.
- Ex. W3—Certified copy of the Romand Case Diary in S.C. No. 106/82 on the file of the Additional District Sessions Judge, Adilabad.
- Ex. W4—Certified copy of the Judgement in S.C. No. 106/82 dt. 17-8-84 on the file of the Assistant Sessions Judge, Asifabad

Ex. W5—Representation dt. 26-8-1985 made by J. Dur-gaiah, General Secretary, Singareni Miners and Engineering Worker's Union, Ramakrishnapur to the Asstt. Labour Commissioner (C) Mancherial with regard to illegal termination of the services of Mudimadugula Ankuloo.

Ex. W6—Failure of conciliation report dt. 31-1-1986.

Documents marked for the Management

Ex. M1—Appointment Order dt. 27/29-5-1979 issued to Mudimadugula Ankuloo and 17 others by the Management of S.C. Co. Ltd., Bellampalli appointing them as General Mazdoors Cat. I.

Ex. M2—Bonus particulars of Mudimadugula Ankuloo with regard to attendance particulars.

Ex. M3—Request letter dt. 30-5-84 of Mudimadugula Ankuloo to the General Manager, S.C. Co. Ltd., Bellampalli.

Ex. M4—Photostat copy of the Medical Certificate issued to Mudimadugula Ankuloo by the Civil Asstt. Surgeon, Government Dist. Headquarters Hospital, Karimnagar.

Ex. M5—Representation dt. 1-12-87 made by Mudimadugula Ankuloo to the General Manager, S.C. Co. Ltd., Bellampalli Division with regard to reappointment as a General Mazdoor.

Ex. M6—Failure conciliation report dt. 31-1-86 (Ex. W6).

Ex. M7—Circular dt. 4-1-82, declaring Coal Industry as Public Utility Service.

Ex. M8—Photostat copy of the Memorandum of Settlement arrived at under Section 12(3) of the I.D. Act, 1947 between the Management of Singareni Collieries Company Limited, and their workmen represented by (1) Singareni Collieries Workers' Union, (2) Tandur Coal Mines Labour Union, (3) Singareni Collieries Employees Union and (4) A.P. Colliery Mazdoor Sangh on 29-1-81 at Hyd.

Ex. M9—Circular dt. 5-7-82 declaring Coal Industry as public utility service.

C. RAMI REDDY, Industrial Tribunal

नई दिल्ली, २८ दिसम्बर, १९८९

का. आ. 165.—श्रीधोगिक विवाद प्रधिनियम १९४७ (१९४७ का १४) की धारा १७ के प्रत्यारण में केन्द्रीय सरकार व भैरव इस्टर्न कोलफील्ड्स लिम. की नियोजितिहासी के प्रबंधतात्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुष्ठान में निर्दिष्ट श्रीधोगिक विवाद में केन्द्रीय सरकार श्रीधोगिक अधिकारण कलकत्ता के पंचायत को प्रकाशित करती है जो केन्द्रीय सरकार को २६-१२-८९ को प्राप्त हुआ था।

New Delhi, the 28th December, 1989

S.O. 165.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of Monoharbal Colliery of M/s. Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on 26-12-89.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 54 of 1986

PARTIES :

Employers in relation to the management of Monoharbal Colliery of M/s. E.C. Ltd.

AND

Their workmen.

PRESENT:

Mr. Justice Sukumar Chakravarty, Presiding Officer.

APPEARANCES :

On behalf of Management—Mr. B. N. Lala, Advocate.
On behalf of Workmen—None.

STATE : West Bengal.

INDUSTRY : Coal.

AWARD

By Order No. L-19012(1)/86-D.IV(B) dated 4th July, 1986, the Government of India, Ministry of Labour referred the following dispute to this Tribunal for adjudication:—

"Whether the action of the management of Monoharbal Colliery of M/s. E.C. Ltd., P.O. Ethora (Burdwan) in not regularising Shri Bholo Nath Sarkar, Lamp Chargeman and S/Shri Nitya Nand Laik, Paresh Muchi and Dhiren Thakur, Cap Lamp Mazdoor in the post of Lamp Clerk (Issue & Return) in which they are working and giving them the appropriate grade of pay and other benefits is justified? If not, to what relief the workmen are entitled?"

2. When the case is called out today, Mr. B. N. Lala, Advocate appears for the Management. Nobody appears for the Union. A petition has however been received from the Union stating therein that the Union is not interested to proceed with the reference and the Union has prayed for a "No Dispute Award". Mr. Lala, appearing for the Management has no objection in this regard.

3. On due consideration of the petition of the Union as well as the submission of Mr. Lala appearing on behalf of the Management, I find that this Tribunal has no other alternative but to pass a "No Dispute Award" and accordingly a "No Dispute Award" is passed.

This is my Award.

SUKUMAR CHAKRAVARTY, Presiding Officer
[No. L-19012(1)/86-D.IV(B)/IR (C.II)]

Dated, Calcutta,
The 18th December, 1989.

का. आ. 166.—श्रीधोगिक विवाद प्रधिनियम १९४७ (१९४७ का १४) की धारा १७ के प्रत्यारण में केन्द्रीय सरकार व मैर्चर्ज इस्टर्न कोलफील्ड्स लिम. की नियोजितिहासी के प्रबंधतात्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुष्ठान में निर्दिष्ट श्रीधोगिक विवाद में केन्द्रीय सरकार श्रीधोगिक अधिकारण कलकत्ता के पंचायत को प्रकाशित करती है जो केन्द्रीय सरकार को २०-१२-८९ को प्राप्त हुआ था।

S.O. 166.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Calcutta as shown in the Annexure in the industrial dispute between the employers in relation to the management of Ningha Colliery of M/s. Eastern Coalfields Ltd. and their workmen, which was received by the Central Government on 20-12-89.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 11 of 1983

PARTIES :

Employers in relation to the management of Ningha Colliery of Messrs Eastern Coalfields Limited,

AND

Their workmen.

PRESENT:

Mr. Justice Sukumar Chakravarty, Presiding Officer.

APPEARANCES:

On behalf of Management—Mr. B. N. Lala, Advocate.
On behalf of Workmen—None.

STATE : West Bengal.

INDUSTRY : Coal.

AWARD

By Order No. L-19012(163)/82-D.IV(B) dated 14th January, 1983, the Government of India, Ministry of Labour and Rehabilitation (Department of Labour) referred the following dispute to this Tribunal for adjudication :

"Whether the action of the management of Ningha Colliery of Eastern Coalfields Limited, Post Office Kalipahari, District Burdwan not to regularise Shri Ram Nandan Singh, Machine Incharge/Machine Supervisor in Technical and Supervisory Grade-C with effect from 31-1-1973 is justified? If not, to what relief the workman concerned is entitled and from what date?"

2. When the case is called out today, Mr. B. N. Lala, Advocate appears for the Management. Nobody appears for the Union. A petition has however been received from the Union stating therein that the Union is not interested to proceed with the present reference and the Union has prayed for a "No Dispute Award". Mr. Lala appearing for the Management has no objection in this regard.

3. On due consideration of the petition of the Union as well as the submission of Mr. Lala appearing on behalf of the Management, I find that this Tribunal has no other alternative but to pass a "No Dispute Award" and accordingly a "No Dispute Award" is passed.

This is my Award.

SUKUMAR CHAKRAVARTY, Presiding Officer
[No. L-19012(163)/82-D.IV.B/IR(C.II)]

Dated, Calcutta,

The 18th December, 1989.

R. K. GUPTA, Desk Officer

नई दिल्ली, 29 दिसम्बर, 1989

का. ना. 167 :—प्रौद्योगिक विवाद अधिनियम 1947 (1947 का 14) को धारा 17 के अनुसार में केन्द्रीय सरकार में संबंधी भारत कोकिंग कॉर्पोरेशन लिमिटेड की अकाशकिणारी कोलिंगरी के प्रबंधन संस्था से सम्बद्ध नियोजकों और उनके कर्मकारों के बात प्रबंधन में विदिष्ट प्रौद्योगिक विवाद में केन्द्रीय सरकार प्रौद्योगिक अधिकरण (सं. 1) धनवाद के पंचपट को प्रकाशित करता है जो केन्द्रीय सरकार को 21-12-1989 को प्राप्त हुआ था।

New Delhi, the 29th December, 1989

S.O. 167.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. I), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Akashkinari Colliery of M/s. Bharat Coking Coal Ltd. and their workmen, which was received by the Central Government on the 21-12-1989.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 67 of 1982

PARTIES:

Employers in relation to the management of Akashkinari Colliery of M/s. B.C.C. Ltd.

AND

Their Workmen.

PRESENT:

Shri S. K. Mitra, Presiding Officer.

APPEARANCES:

For the Employers : Shri B. Joshi, Advocate.

For the Workmen : Shri S. Bose, Secretary, Rashtriya Colliery Mazdoor Sangh.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 15th December, 1989

AWARD

By Order No. L-20012(34)/82-D.III(A), dated, the 24th June, 1982, the Central Government in the Ministry of Labour, as, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the demand of the workmen of Akashkinari Colliery of Messrs. Bharat Coking Coal Limited, Post Office Katrasgarh, District Dhanbad for continuance of Shri Bhukal Singh as Munshi in Clerical Grade-III is justified? If so, to what relief is the workman entitled?"

2. The case of the sponsoring union, Rashtriya Colliery Mazdoor Sangh, as appearing from the written statement submitted on behalf of the workman, is as follows :

Bhukal Singh, the concerned workman, joined the service in Akashkinari colliery with effect from 5-10-72 in the capacity of Soft Coke Supervisor, but his designation was recorded as Night Guard which was altogether a different nature of job. The management of the said colliery was taken over by the Central Government with effect from 31-1-73 and it was nationalised with effect from 1-5-73 and its ownership, management and control vested in M/s. B.C.C. Ltd., a Central Government company. By May-June, 1975 the management of M/s. B.C.C. Ltd. decided to regularise the grade and scale of wages/salary of the employed persons and similar actions were also taken in respect of employees of Akashkinari colliery. The authorities did not regularise the concerned workman in proper grade as Soft Coke Supervisor as his designation was recorded as Night Guard. The management of Akashkinari colliery, after nationalisation, entrusted the concerned workman with additional duty of supervision of Truck Loading at colliery depot under the immediate control of the Asstt. Manager of the colliery under orders from the colliery Manager. When the management did not regularise the concerned workman in accordance with the nature of job performed by him under the direction and control of the colliery officers, he made a written representation dated 3-10-75 before the Colliery Manager. Having received the said representation the Colliery Manager, by his letter dated 21-10-75 recommended his case to the Personnel Manager, Area No. III of M/s. B.C.C. Ltd. to regularise him in Clerical Grade III according to circumstances and merit of the case. But no information was received by him nor was he regularised by the management in terms of the recommendation made by the Colliery Manager by his letter dated 21-10-75 although the management had adopted a general policy to review and regularise disputed cases of similar nature every year or even earlier. He made a further representation to the management by letter dated 24-10-79 for his regularisation in proper grade. This time his representation was processed by the Deputy Personnel Manager of Area No. III and he submitted his finding to the Personnel Manager of Area No. III by memo dated 30-10-1979. After having received the finding of the Dy. Personnel Manager, the Personnel Manager, Area No. III issued an Office Order date 10-11-79 with the approval of the competent authority

that the concerned workman should be regularised as Soft Coke Munshi and be fixed in the time scale of Clerical Grade III of coal mines wage scales. Having received the aforesaid Office Order dated 10-11-79, the Colliery Manager, Akashkinari colliery issued an Office Order dated 12-11-79 regularising the concerned workman as Soft Coke Munshi and placing him in Clerical Grade III with effect from 12-11-79 with the approval of the competent authority. Despite the Office Order issued by the management the matter remained hanging and the proposed regularisation was not done by the management. In the circumstances, the sponsoring union has raised a demand for regularising the concerned workman as Munshi and placing him in Clerical Gr. III with effect from 1-5-73 and for payment of difference of wages and other benefits.

3. The case of the management of Akashkinari colliery of M/s. B.C.C. Ltd., as appearing from its written statement, details apart, is as follows :

The present reference is not maintainable. The concerned workman, Bhukal Singh, was working as Night Guard at Akashkinari colliery under the joint control of the Chief of Security and the General Manager of Area No. III. He approached the Personnel Manager of Area No. III for regularising him as Munshi in Clerical Grade III on the plea that he was actually working as Munshi in Soft Coke Bhatta and possessed requisite qualification. The then Personnel Manager, acting on his false representation, issued order dated 10-11-79 regularising him as Soft Coke Munshi of Akashkinari colliery and placing him in Clerical Grade III. After issue of the aforesaid order the Manager of Akashkinari colliery by his order regularised him as Soft Coke Munshi and placed him in Clerical Grade-III with effect from 12-11-79. The order of the Personnel Manager of the Area No. III was illegal and void because Govindpur Area was not competent authority to regularise or promote any Night Guard into Clerical Grade and that too contrary to the norms laid down by the management. In fact, the management has not permitted promotion of any time rated worker into Clerical Grade and has not issued any rule for effecting such promotion. If any workman in the Clerical Grade is required to be appointed, a departmental candidate can apply for the same. In all cases of such recruitment minimum qualification of matriculation has been prescribed. The concerned workmen does not possess the minimum qualification to be appointed in Clerical Grade III, and as such, he could not be appointed to that post. The General Manager of Area No. III on the advice of the Chief Security, the competent authority, to deal with this matter, by his order dated 7-1-80 cancelled the order of the Personnel Manager dated 10-11-79 and the concerned workman was reverted to his original post of Night Guard. He worked from 12-11-79 till 7-1-80 i.e. less than two months, on the basis of illegal and void order of Personnel Manager and he cannot claim to continue in Munshi in Clerical Grade III. He was intimated by letter dated 9/10-1-80 of the Superintendent of colliery that his appointment to the post of Munshi in Clerical Grade III was cancelled by the General Manager of Area No. III and he was permitted to perform his duty as Night Guard. He had already been transferred to Bhowra Colliery by the order of the Chief of Security. He was released from Akashkinari colliery by order dated 8/10-2-80 to enable him to report for duty at Bhowra colliery, but he avoided to report for duty there. He was again directed by letter dated 20-3-80 to report for his duty at Bhowra colliery. In the circumstances, the demand of the concerned workman to continue as Soft Coke Munshi in Akashkinari colliery is illegal and unjustified.

4. In rejoinder to the written statement of the management the sponsoring union has denied and disputed each and every statements of the management impinging on the claim of the concerned workman for regularisation as Soft Coke Munshi in Clerical Grade III. The union has asserted that although he was designated as Night Guard, he was engaged by the management as Munshi, and submitted that this is not a case of promotion, but a simple case of regularisation in conformance to the job performed by the concerned workman as Munshi which is a job in Clerical Grade III rate of wages. It has also been asserted by the union that the Chief Security gave his consent for regularisation of the concerned workman in the post of Munshi.

5. In rejoinder to the written statement of the sponsoring union, the management has reiterated that the concerned workman was appointed as Night Guard and performed the duties of Night Guard and that all workmen were paid proper wages according to the Wage Board Recommendations immediately after take over of the management of the colliery. The concerned workman was a Night Guard and he was regularised in service as such. He never worked as Soft Coke Supervisor and he never represented any time claiming regularisation as Soft Coke Supervisor. The approval of the competent authority was not obtained in regularising the concerned workman as Soft Coke Munshi and Personnel Manager made a mistake in regularising him as Soft Coke Munshi.

6. The sponsoring union has examined the concerned workman and laid in evidence a number of documents which have been marked Exts. W-1 to W-7 in support of its claim. On the other hand, the management has examined only one witness, namely, MW-1 Surendra Singh who have been working in Personnel Department of Akashkinari Colliery from before nationalisation and laid in evidence a series of documents which have been marked Exts. M-1 to M-8.

7. Admittedly, Akashkinari colliery is a non-coking coal mine and the management of the colliery was taken over by the Central Government with effect from 31-1-73 and the colliery was nationalised with effect from 1-5-73 along with others non-coking mines. Consequent upon nationalisation the ownership, management and control of Akashkinari colliery vested in M/s. B.C.C. Ltd., a Central Government company.

8. It is the case of the sponsoring union that the concerned workman, Bhukal Singh, joined the service in Akashkinari colliery with effect from 5-10-72. This statement of facts has not been specifically denied by the management. The concerned workman has also emphatically stated in its testimony before this Tribunal that he has been working in Akashkinari colliery since 5-10-72. He has not been cross-examined on this point. This being so, the position is reached that the concerned workman joined the service in Akashkinari colliery with effect from 5-10-72.

9. It is the further case of the sponsoring union that although the concerned workman was engaged in the capacity as Soft Coke Munshi, his designation was recorded as Night Guard. This has been hotly disputed by the management. In support of its contention the management has filed attendance registers marked Exts. M-2 to M-2/2. It appears from these attendance registers that the concerned workman had put in his attendance as Night Guard. MW-1 Surendra Singh has stated that he has been working in Akashkinari colliery from before nationalisation till date. He has stated that the concerned workman was working as Night Guard under the management of the colliery. But in cross-examination he has stated that he does not perform out door duty and that the job of Soft Coke Munshi is an out door job. He has admitted that he does not have full knowledge about the number of workmen employed in Akashkinari colliery for doing the job of Soft Coke Manufacture. Thus, his evidence renders little or no assistance to the management inasmuch as he does not perform any out door duty and so he cannot have any knowledge about the manufacture of Soft Coke and the employees employed on that job since the manufacture of Soft Coke is an out door job. On the other hand, the concerned workman has emphatically stated in conformance with the written statement of the sponsoring union, that he was posted in Akashkinari colliery in the capacity of Soft Coke Supervisor although his designation was recorded as Night Guard. In cross-examination he has denied the suggestion that he all along worked as Night Guard.

It appears from the evidence of MW-1 Surendra Singh that Akashkinari colliery is within Govindpur Area. By order dated 10/15/17-9-79 the concerned workman was transferred to Bhowra Colliery (Ext. M-3) and by order dated 29-3-80 he was transferred and directed to report for duty in Bhowra colliery (Ext. M-4). It appears from the letter of Personnel Manager of Katras Area of M/s. B.C.C. Ltd. dated 25-12-81 addressed to the D.I.G. (Chief Security) Jajgora (Ext. W-4) that the concerned workman was working as Night Guard in Salanpur colliery and that he was allowed to work as Soft Coke Munshi in Clerical Grade III while he was work-

ing in Akashkinari colliery (Area No. III). Thus, from the document of the management it is established that the concerned workman, while posted at Akashkinari colliery, was allowed to work as Soft Coke Munshi in Clerical Grade III. Hence, I come to the conclusion that the concerned workman was working as Soft Coke Munshi/Supervisor in Akashkinari colliery although he was designated as Night Guard.

10. Admittedly, the Personnel Manager of Govindpur Area regularised the service of the concerned workman as Soft Coke Munshi and placed him in Clerical Grade III with immediate effect by his order dated 10-11-79 (Ext. W-1—M-1). Thereafter the Manager of Akashkinari colliery regularised his service as Soft Coke Munshi and placed him in Clerical Grade III with effect from 12-11-79 by Office Order of even date (Ext. W-2). MW-1 Surendra Singh has admitted that in terms of Office Order issued by Personnel Manager of the Area the concerned workman was deployed for duty to work as Soft Coke Munshi for sometime and that he worked in that capacity for about two months or so. The concerned workman has also stated that his service was regularised as workman in Clerical Grade III. Thus, it is seen that the order of regularising the service of the concerned workman was given effect to by the management. But the General Manager of Govindpur Area by Office Order dated 7-1-80 cancelled his regularisation as Soft Coke Munshi and he was again reverted back as Night Guard with immediate effect (Ext. M-7).

Shri B. Joshi, Advocate for the management has submitted before me that the order regularising the service of the concerned workman as Soft Coke Munshi on Clerical Grade III was issued by mistake by the Personnel Manager and that approval of the competent authority had not been taken. But the letter of the Personnel Manager of Katras Area to the D.I.G. (Chief Security), Jealgora dated 25-12-81 indicates that the concerned workman was reverted back as Night Guard as no approval was obtained from the office of the D.I.G. (Chief Security). It appears that the D.I.G. (Chief Security) by letter dated 17/20/24-2-82 expressed that he had no objection if the designation of the concerned workman was changed to that of Soft Coke Munshi. Thus, it is seen that ultimately the approval of D.I.G. (Chief Security) to the regularisation of the concerned workman as Soft Coke Munshi was available. The Office Order of the Manager of Akashkinari colliery dated 12-11-79 (Ext. W-2) indicates that the approval of the competent authority was taken for regularisation of the concerned workman in service as Soft Coke Munshi and placing him in Clerical Grade III.

11. Shri B. Joshi has further submitted that since the concerned workman was under the control and supervision of the D.I.F. (Chief Security) his regularisation in service as Soft Coke Munshi on Clerical Grade III was not proper.

But the authority given to the D.I.G. (Chief Security) was a delegated one and the Agent of the colliery or other officers having control over the management of the colliery have not been denuded of their power to appoint employees in the colliery and to control and supervise their work. As a matter of fact Office Order dated 29-3-79 issued by the General Manager (Personnel) of the Headquarters envisages that Night Guards/Watch and Ward Personnel (other than those governed by CISF or Home Guards) posted for security duty in the colliery and Areas shall be under the administrative control of Superintendent/Managers/General Managers respectively with immediate effect. They shall, however, continue to be under the functional control of DIG/Chief Security (Ext. M-8). This Office Order indicates that either as a Night Guard or Soft Coke Munshi the concerned workman was under the administrative control of the Superintendent/Manager/General Manager of the colliery. The Manager of Akashkinari colliery issued order for regularisation of the concerned workman in service as Soft Coke Munshi with the approval of the competent authority. That being so, the order of the management regularising him in service as Soft Coke Munshi and placing him in Clerical Grade III is quite in order and it was not passed by mistake nor was it not issued by competent authority as Sri Joshi would have me believe.

12. Shri B. Joshi has contended that no notice was required to be given to the concerned workman in conformance to the principles of natural justice before his reversion as the

order regularising him in service was illegal or irregular. He has cited the decision reported in 1983 Lab. I.C. 1884 Patna High Court Full Bench (Bijoy Kumar Bharti and others Vs. State of Bihar and others) in support of his contention. But in that case the appointment was held to be irregular and so Hon'ble Court was pleased to hold that a person has no right to the post if he is appointed irregularly. In the present case the order of regularisation of the concerned workman was passed by a competent authority and so the ratio of the decision of the case cited has got no manner of application in the present case.

Besides, it appears that the implications of Section 9A of the Industrial Disputes Act was not canvassed before the Hon'ble Court. The management of M/s. B.C.C. Ltd. abruptly reverted the concerned workman back to the post of Night Guard without giving him any notice under Section 9A of the Industrial Disputes Act to effect change in the conditions of his service. It is a mandatory provision of the Industrial Disputes Act that the employer should give notice to the workman under Section 9A of the said Act to effect any change in the conditions of service. That being so, the action of the management in reverting the concerned workman back to the post of Night Guard without giving him any statutory notice is unjustified.

13. Considering all these facts and circumstances I come to the conclusion that the demand of the workmen of Akashkinari Colliery of M/s. B.C.C. Ltd. for continuance of the concerned workman in Clerical Grade III as Soft coke Munshi is justified and the management is directed to give him continuance in that post with effect from the date he was regularised in service as such i.e. from 12-11-79.

14. Accordingly, the following award is rendered—the demand of the concerned workmen of Akashkinari colliery of M/s. B.C.C. Ltd. for continuance of the concerned workman in Clerical Grade III as Soft Coke Munshi is justified with effect from 12-11-79. The management is directed to pay him difference of wages, if any, and to employ him as Soft Coke Munshi within two months from the date of publication of the award.

In the circumstances of the case I award no cost.

S. K. MITRA, Presiding Officer
[No. L-20012(34)/82-D.III(A)/IR (Coal-I)]

नई दिल्ली, 1 जनवरी, 1990

का. न्र. 168-ओर्डरिंग फाराम प्रिविडेम 1947 (1947 का 14) द्वा धारा 17 के प्रत्यक्षम में केंद्रीय सरकार मैसर्स मेल्टल कॉलफील्ड लिमिटेड की व्यापार व्यापार के प्रबन्धन में नम्बर नियोजनों और उनके अधिकारों के बाबे सरकार में गिरिष्ठ और्योगित विधाद में केंद्रीय सरकार और्योगित भावधारण (स. 1) प्रवाइट के पांच को प्रकाशित करना है।

New Delhi, the 1st January, 1990

S.O. 168.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 1), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Sawang Washery of M/s. Central Coalfields Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference under section 10(1)(d) of the Industrial Disputes Act, 1947

Reference No. 94 of 1984

PARTIES :

Employers in relation to the management of Sawang Washery of Messrs Central Coalfields Limited,

AND

Their Workmen.

PRESENT :

Shri S. K. Mitra, Presiding Officer.

APPEARANCES :

For the Employers—Shri R. S. Murthy, Advocate.

For the Workmen—Shri S. Paul, Advocate.

STATE : Bihar.

INDUSTRY : Coal.

Dated, the 29th November, 1989

AWARD

The present reference arises out of Order No. L-20012(250)/84-D.III(A), dated the 5th December, 1984 passed by the Central Government in respect of an industrial dispute between the parties mentioned above. The subject matter of the dispute has been specified in the schedule to the said order and the said schedule runs as follows :

"Whether the action of the management of Sawang Washery of M/s. Central Coalfields Limited in dismissing Shri S. S. Verma, Assistant Surveyor with effect from 20-5-1976 is justified. If not, to what relief the workman is entitled?"

2. The dispute has been settled out of Court. A memorandum of settlement has been filed in Court. I have gone through the terms of settlement and I find them quite fair and reasonable. There is no reason why an award should not be made on the basis of terms and conditions laid down in the memorandum of settlement. I accept it and make an award accordingly. The memorandum of settlement shall form part of the award.

3. Let a copy of this award be sent to the Ministry of Labour as required under section 15 of the Industrial Disputes Act, 1947.

S. K. MITRA, Presiding Officer
[No. L-20012(250)/84-D.III(A)/IR(Coal-I)]

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

Ref. No. 94 of 1984

PARTIES :

Employers in relation to the Management of Sawang Washery of Central Coalfields Limited, P.O. Sawang, District Giridih.

AND

Their workmen.

Joint Compromise Petition of the Employers and the Workmen

The above-mentioned Employers and the workmen, Most respectfully beg to submit jointly as follows :—

I. That the employers and the workmen jointly negotiated the matter covered by the above reference with a view to arriving at a mutually acceptable and amicable agreement.

II. That as a result of such negotiations, the parties have arrived at the following agreement :—

(1) It is agreed that the Management shall reinstate the workman concerned Sri S. S. Verma in the post of Asstt. Surveyor in Tech. and Supervisory Grade 'E' which he was holding at the time of his dismissal from service within a fortnight of this joint compromise petition being accepted by this Tribunal.

(2) That it is agreed for the intervening period between the date (i.e. 20-6-1976) of his dismissal and date of reinstatement as indicated in Sub-para (1) above and the workman concerned shall not be entitled to any back wages or other benefits except the continuity of service and the said intervening period wages.

(3) It is agreed that the pay of the workman concerned will be fixed from the date of re-instatement as indicated in Sub-para (1) above in NCWAIV at the stage corresponding to the pay being drawn by him in N.C.W.A. I as on the date of his dismissal from service, by notional fitment in N.C.W.A. II w.e.f. 1-1-1979 and by notional fitment again in N.C.W.A. III, w.e.f. 1-1-1983.

(4) It is agreed that from the date following the date of reinstatement of the workman concerned as indicated in Sub-para (1) above, he will be promoted to the post of Surveyor (Civil) in Technical and Supervisory Grade 'C' and his pay will be fixed as per the provisions of para 50 of the Chapter XII of the Central Wage Board for the Coal Industry.

(5) It is agreed that the Management shall have the right to post the workman concerned at any of the Units of Central Coalfields Limited and to transfer him to any other unit according to requirements of the Management from time to time.

(6) It is agreed that this is an overall agreement/settlement in full and final settlement of all the claims of the workman concerned Sri S. S. Verma and the sponsoring Union arising out of the above reference.

III. That the employers and the workman jointly declare and confirm hereby that they consider the above mentioned terms and conditions of agreement/settlement as fair, just and reasonable to both the parties.

In view of the above, the Employers and the workman pray that the Hon'ble Tribunal may be pleased to accept this joint compromise petition and dispose of the reference in terms thereof by giving an award to that effect.

(R. B. Tripathy)

Secretary,
Rashtriya Colliery Mazdoor Sangh,
Sawang Branch P.O. Sawang,
District Giridih.

(A. K. Sinha),
General Manager,
Kathara Area

Central Coalfields Ltd.,
For and On behalf of Employers.

(S. S. Verma),
Workman concerned.

(R. S. Murthy)
Advocate
For Employers.

Dated : 8th September, 1989.

नंदि दिनी, 3 जनवरी, 1990

का. आ. 169—आधिकारिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसार में केंद्रीय सरकार मैमर्स भारत कोर्किंग कोल लिमिटेड के मृदामर्णह थोक की पालेन्डोह कोलिपरी के प्रबन्धन से सम्बन्ध नियोजकों और उनके कर्मकारों के द्वारा अनुबंध में निर्दिष्ट आधिकारिक विवाद में केंद्रीय सरकार आधिकारिक अधिकारण (म. 2) धनवाद के पंचट का प्रकाशित करती है।

New Delhi, the 3rd January, 1990

S.O. 169.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal (No. 2), Dhanbad as shown in the Annexure in the industrial dispute between the employers in relation to the management of Patherdih Colley of Siwamidih Area of M/s. Bharat Coking Coal Ltd. and their workmen.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD.

PRESENT :

Shri I. N. Sinha, Presiding Officer

Reference No. 9 of 1986

In the matter of an industrial dispute under Section 10(1)(d) of the I.D. Act, 1947

PARTIES :

Employers in relation to the management of Patherdih Colliery of Sudamdh Area M/s. Bharat Coking Coal Limited,

AND

Their workmen.

APPEARANCES :

On behalf of the workmen—Shri B. N. Sharma, Joint General Secretary, Janta Mazdoor Sangh.

On behalf of the employers—Shri R. P. Srivastava, Sr. Personnel Officer.

STATE : Bihar.

INDUSTRY : Coal.

Dhanbad, the 11th December, 1989

AWARD

The Government of India, Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012(134)/85-D.III(A), dated, the 3rd January, 1986.

SCHEDULE

"Whether the demand of Janta Mazdoor Sangh that the management of Patherdih Colliery in Sudamdh Area of M/s. Bharat Coking Coal Limited should allow back wages and other benefits of service to Sri Dalbir Yadav, Driller between January, 1974 and January, 1981 is justified? If so, to what relief is the workman entitled?"

The case of the workmen is that the concerned workman Dalbir Yadav of village Chougai, Kendidora, P. S. Dumroon, District Bhojpur was employed in Patherdih colliery since long before the nationalisation of the Coal Mine on 1st May, 1972. He was on the roll of the colliery on the appointed date and therefore he became the employee of M/s. BCCL with effect from 1st May, 1972. He continued to receive wages and all other benefits till October, 1973 from BCCL. The identity card issued to him was stolen by someone for which he lodged complaint to the Area Manager Patherdih with a copy to the General Manager, Bhawra. He was assured that a duplicate identity card will be issued to him in due course of time. He went to his village home during Durga Puja of 1973 after taking leave from the colliery officials. He remained at his village home for about 2 months. When returned back from home in January, 1974, he found that one Baban Yadav S/o Yognmohan Yadav of village Chokowa, P.S. Nujinagar, District Bhojpur was inducted in his place and was impersonating as Dalbir Yadav and was working as such. When the concerned workman knew of this fact he informed the Area Manager but the management of the colliery did not allow the concerned workman to resume his duty and allowed Baban Yadav to continue in the job. The concerned workman raised an industrial dispute under Section 2(a) of the I.D. Act by his letter dated 2nd August, 1979 before the ALC(C), Dhanbad. The ALC(C) by his letter dated 13th August, 1979 informed the concerned workman that the case was very belated and advised him to report the matter to the police. The Superintendent of Patherdih colliery vide his letter dated 9th October, 1979 informed the ALC(C) that he had reported the matter to the DIG/Chief Security and requested for the stay of the conciliation proceeding till a final reply was received. The dispute was therefore stayed before the ALC(C) at the instance of the management. Thereafter the concerned workmen was given employment vide letter dated 19th January, 1981 after receipt of the report of the Chief of Security that the concerned workman was the genuine Dalbir Yadav. The matter was again taken up for conciliation by the ALC(C) in respect of the payment of his back wages but the management did not pay wages to the

concerned workman for the period of forced idleness from January, 1974 to January, 1981. The management prevented the concerned workman from doing his duty without any fault on his part from January, 1974 to January, 1981 and he was thus deprived of his wages for the aforesaid period for which he is entitled. Finally the dispute was raised by J.M.S. for the payment of wages and other benefits on 1st December, 1984 and on failure of the conciliation proceeding this reference has been made to this Tribunal for adjudication. On the above facts it is prayed that the action of the management in stopping the concerned workman from January, 1981 was not justified and that he was entitled to full wages and other benefits.

The case of the management is that the concerned workman Shri Dalbir Yadav was first taken in employment at Patherdih colliery in the year 1981 and his claim for wages from January, 1974 has no basis. The concerned workman was not on the roll of the colliery at the time of nationalisation of coal mine and his name was not in the Form B Register or in the Attendance Register or the wage sheets of the colliery. There was one manually worked open cast mine of private owner of which over burden used to be removed by a contractor. After nationalisation of the open cast mine working the contract system was abolished in October, 1973. The contract was formerly removing the over burden by temporary/casual workmen and no workman was continuously engaged by the contractor so that the workmen may not qualify himself for becoming a member of C.M.P.F. After abolition of contract system the contractor gave a list of workmen working under him including the name of the concerned workman. The management decided to select the workmen out of the list according to requirement. The contractors workers were called before the selection committee and after observing their performance, efficiency as well as their past experience some of them were recruited by the management as fresh recruits. The concerned workman did not appear before the selection committee and as such he was not selected. The concerned workman appeared in May, 1977 for the first time and claimed himself to be Dalbir Yadav and requested the management to recruit him in the employment. The local management did not entertain his claim as he had not appeared before the selection committee at the time of recruitment of contractor labour. Thereafter the concerned workman submitted his representation before the higher authorities of the management and he was taken in the employment in the year 1981 for the first time. The concerned workman has no right to claim for employment under any statutory provision under the management. However, the management considered his case on his representation in the year 1980 and gave him employment in January, 1981 as his name was included in the list of contractor. On the above facts it is submitted that the concerned workman is not entitled to arrears of wages from January, 1974 to January, 1981.

The point for decision is whether the concerned workman is entitled to the back wages and other benefits between January, 1974 and January, 1981.

The workmen examined 2 witnesses and the management examined one witness in support of their respective case. The documents of the workmen are marked Ext. W-1 to W-3 and the documents of the management are marked Ext. M-1.

WW-2 is the concerned workman Dalbir Yadav. It will appear from his evidence that he was working at Patherdih colliery since 1972 as O.B.R. under a contractor. He has stated that Patherdih colliery was nationalised in 1972 and that he had worked under the contractor till before nationalisation of Patherdih colliery. He has stated that in the month of July, 1973 their services were taken by BCCL from the contractor. In support of his case the workmen have filed photo copy of Identity card Register prepared by Sudamdh colliery of M/s. BCCL. The management has not produced any document to falsify the entries in the extract of the identity card register Ext. W-3. It will be clear from Ext. W-3 that the name of the concerned workman Dalbir Yadav son of Lalmchan Yadav of village Chogai, P.S. Dumrao, District, Arrah was entered by Sudamdh colliery of M/s. BCCL. The management has not produced any document to falsify the entries in the extract of the identity card register Ext. W-3. It will be clear from Ext. W-3 that the name of the concern-

ed workman Dalgir Yadav, son of Lalmohan Yadav, of village Chogia, P.S. Dumrao, District Arrah as entered by Sudamdhil colliery of M/s. BCCL, obviously denoting that the concerned workman was selected by the management and was taken in the service of BCCL. MW-1 Ram Awadesh Singh working in the personnel department of Patherdih Colliery has stated that in October, 1973 the work of O.B.R. done through contractor was abolished and it was decided by the management that after screening through the selection committee the workmen working as O.B.R. under the contractor should be given employment by the management of BCCL subject to the suitability and requirement of the management. He has stated that Dalgir Yadav had not appeared before the selection committee in 1974 for the purpose of screening. He has further stated that he did not know Dalgir Yadav and this witness was not concerned with the proceedings of the selection committee and as such his evidence that the concerned workman had not appeared before the selection committee in 1974 cannot be relied specially in view of the fact that the name of the concerned workman did appear in the identity card register of Sudamdhil colliery of BCCL. I hold therefore that the concerned workman who was a contractor's worker after the abolition of the contract system was selected by the selection committee of Patherdih colliery of BCCL and that he was given employment and his name was entered in the identity card register.

The concerned workman WW-2 has himself stated in his examination that he had gone on leave for about one month at his village home in the Durga Puja of 1973 and came to join Patherdih colliery in January, 1974. In cross-examination he has stated that leave was not due in his account when he had proceeded on leave for his village home. It is clear therefore that he had proceeded to his village home without any sanctioned leave or permission. WW-2 has stated that in January, 1974 he came to join at Patherdih colliery but he was not allowed to join and that he continued correspondence and representation with the management. The workmen have not filed any correspondence or representation made by the concerned workman to the management for giving him employment after he returned in January, 1974. The only letter which has been produced by the management is Ext. M-1 dated 1-4-77 MW-1 has stated that in 1977 an application was filed by Dalgir Yadav in which he stated that one Baban Yadav was working in his place in Patherdih colliery and thereafter the management requested for report of genuineness of Dalgir Yadav from the vigilance department and police department. He has further stated that after enquiry it was learnt that the person who had filed the application Ext. M-1 was the genuine Dalgir Yadav and thereafter the management gave employment to him in 1981. He has specifically stated that the concerned workman had not filed any application or representation prior to Ext. M-1. The evidence of MW-1 has remained unassailed. Ext. M-1 dated 1-4-77 had been written by the concerned workman to the Area Manager, Patherdih colliery of M/s. BCCL. He has stated that he was formerly working in open cast mine of Patherdih colliery in 1974 under Viswakarmababu Thikadar. He has further stated that he had been given card by Patherdih colliery after its nationalisation for receiving wages and had received payment for 3 or 4 times on the basis of the said card but the card was stolen by somebody. He stated this fact to his brother-in-law Laxman Yadav working as Night Guard who told that he would get a new card issued and the concerned workman waited for receipt of the card for a long time on his brother-in-law's repeated assurance and thereafter he went to his village home. whenever he went to his brother-in-law he was assured that he would get the card issued to him and that he was making efforts for the same. He has further stated that his brother-in-law deceived him for such a long time and that he learnt that one Baban Yadav was working in the colliery on the basis of his card. The concerned workman prayed in Ext. M-1 for enquiry and employment to him. It will thus appear from Ext. M-1 that the concerned workman had not actually reported for duty as is being now asserted by him and it is clear that the concerned workman was waiting for the issuance of a new card on the assurance of his brother-in-law and that when he did not get the card and learnt that one Baban Yadav was working in his name, he made this representation Ext. W-1 for enquiry in the matter. WW-1 Shri Anand Mohan Pd. is a trade union leader who had earlier raised the dispute in respect

of the concerned workman. He has stated that he had raised the industrial dispute in 1976 or 1977 but there is no paper to show that any industrial dispute had been raised on behalf of the concerned workman in 1976 or 1977. On perusal of the entire evidence it appears that the concerned workman had not reported for duty before the management prior to 1-4-77 and as such the concerned workman cannot claim wages for the period for his idleness.

It will also appear from the W.S. of the parties and the evidence of the parties that on a report being made to the management that one Baban Yadav was working in Patherdih colliery in the name of the concerned workman Dalgir Yadav an enquiry was made through the DIG (Chief of Security). The report of the Chief of Security is Ext. W-1 in this case. It will appear from the report Ext. W-1 that Baban Yadav is impersonating the real claimant Dalgir Yadav and as such Baban Yadav who is impersonating Dalgir Yadav may be branded as an imposter and that the claim of Dalgir Yadav be entertained and finalised. It was on the basis of this report of the Chief of Security that the concerned workman was given employment by the management vide office order Ext. W-2 dated 19-1-1981. As it was a matter of dispute whether the concerned workman was in fact Dalgir Yadav or whether the person working in the name of Dalgir Yadav was the real person, it was not possible for the management to give employment to the concerned workman without any enquiry and it was only after a clear report was received that the management gave employment to the concerned workman. In the above view of the matter the management was quite justified in not allowing wages and other benefits from January, 1974 to the date of his employment in 1981. The concerned workman was rather fortunate that no disciplinary proceeding had been taken against him for absenting without leave or permission for such a long time.

In the result, I hold that the demand of Janta Mazdoor Sangh that the management of Patherdih colliery of M/s. BCCL should allow back wages and other benefits of services to the concerned workman between January, 1974 and January 1981 is not justified and accordingly the concerned workman is entitled to no relief.

This is my Award.

I. N. SINHA, Presiding Officer
[No. L-20012(134)85-D.III(A)(IR(coal-I))]
K. J. DYVA PRASAD, Desk Officer

नई दिल्ली, 4 जनवरी, 1990

का. आ. 170 :—श्रीवौद्धिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसार में केन्द्रीय सरकार यूनाइटेड बैंक ऑफ इण्डिया के प्रबंधतंत्र के संबंध नियोजकों और उनके कमीकारों के चाच अनुबंध में निर्दिष्ट श्रीवौद्धिक विवाद में केन्द्रीय सरकार श्रीवौद्धिक अधिकारण कलकत्ता के पचासठ की प्रकाशित करनी है जो केन्द्रीय सरकार की प्राप्त हुआ था।

New Delhi, the 4th January, 1990

S.O. 170.—In pursuance of section 17 of the Central Government Industrial Tribunal Calcutta as shown in the Annexure in the Industrial dispute between the employers in relation to the United Bank of India and their workmen, which was received by the Central Government.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

Reference No. 31 of 1985

PARTIES :

Employer in relation to the management of United Bank of India.

AND

Their workmen.

PRESENT :

Mr. Justice Sukumar Chakravarty.—Presiding Officer.

APPEARANCES :

On behalf of employer.—Mr. R. N. Mazumdar, Advocate with Mr. Anil Kumar, Law Officer of the Bank.

On behalf of the workmen.—Mr. Manoranjan Bose, Member—General Council of All India Bank Employees' Association, with Mr. Dipak Sarangi, Joint Secretary of the Union.

STATE : West Bengal INDUSTRY : Banking
AWARD

By Order No. L-12012/58/89-D.II(A) dated 10-9-1985, the Government of India, Ministry of Labour referred the following dispute to this Tribunal for adjudication :

- "1. Whether the management of United Bank of India, Ghatsila Branch was justified in terminating the service of Shri N. K. Manna sub-staff with effect from 20-3-1982. If not, to what relief is the workman entitled to?"
- "2. Whether the management were justified in making payment of Rs. 5.40 per day to Shri N. K. Manna sub-staff during the period of his service with them? If not, to what relief is the workman entitled to?"

2. The case as made out by the Union espousing the cause of the concerned workman Nil Kanta Manna in their written statement is briefly as follows : Nil Kanta Manna was appointed on 15 October, 1980 by the Manager of the Ghatsila Branch of the employer Bank as a Water Boy at the said Branch under a letter of the same date at the daily wage of Rs. 5.40. The workman concerned after his such appointment, was in continuous service till 20th March, 1982 covering 521 days in all. Because of his such continuous service for the aforesaid period the concerned workman attained the permanent status in such service. The employer Bank however terminated the service of the concerned workman with effect from 20th March, 1982 under a letter of the same date without assigning any reason and without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). As such the termination of the service of the concerned workman on 20-3-1982 by the employer was illegal and the concerned workman should be reinstated to his service with all benefits.

3. After the termination of the service on 20-3-1982 the concerned workman made the protest. The concerned workman was however again appointed as Water-boy on 13-5-1982 and again his service was terminated on 9-8-1982. The concerned workman subsequently was again re-employed on 11-8-1982 and his service was again terminated on 23-9-1982. The concerned workman was however not re-employed after 23-9-1982.

4. The concerned workman by his continuous service for 521 days as a Waterboy after his first appointment on 15-10-1980 attained the permanent status in the service of the subordinate staff of the Bank, although he was temporarily appointed. The employer Bank without complying with the provisions of section 25F of the Act illegally terminated his service on 20-3-1982. The concerned workman should be treated in service because of such illegal termination. The subsequent appointments and terminations of service of the concerned workman will not in any way affect the continuity in the service of the concerned workman as the termination of his service on 20-3-1982 was illegal.

5. According to the union, the concerned workman who was appointed as the subordinate staff and who worked as subordinate staff ought to have been paid the wages of the subordinate staff during his service. The employer Bank however arbitrarily paid him the daily wage during his service first @ Rs. 5.40 per day and then on his subsequent re-employment @ Rs. 7.30 and Rs. 7.03 per day. After the termination of the service of the concerned workman, the union took up the cause of the concerned workman and claimed his reinstatement and also the increased wages in the scale of the subordinate staff for the period of his service under the employer Bank. The employer Bank having refused to comply with the said demand, and the conciliation proceedings having failed, the present reference has been made by the appropriate government for adjudication of the disputes involved therein.

6. The case as made out by the employer Bank in their written statement-cum-rejoinder is briefly as follows : According to the employer Bank this reference is bad in law and accordingly not maintainable. Nil Kanta Manna is not a workman according to the management. He was a Canteen boy in the canteen run by the canteen committee at the Ghatsila Branch of the employer Bank from 1977. When the subordinate staffs belonging to the United Bank of India Shramik Karmachari Samity stopped to supply the drinking water to the employees of the Bank and the Bank's customers, the Manager of the Ghatsila Branch of the employer Bank temporarily appointed Nil Kanta Manna as a Water boy under their letter dated 15-10-1980 and Nil Kanta Manna used to serve drinking water on part time basis while he was discharging his duties as a Canteen boy. Nil Kanta Manna was never appointed as a subordinate staff even temporarily and not against any permanent or temporary vacancy of the subordinate staff. His appointment as a Water boy was purely casual and temporary on daily wages agreed by the employer and employee, to meet the exigency. When the regular subordinate staff agreed to service drinking water and when further service of Nil Kanta Manna as Water boy was considered unnecessary his service was terminated on 20-3-1982. Nil Kanta Manna did not work for 521 days continuously nor did he work for 240 days in a calendar year. Accordingly the employer did not violate any provisions of the Act including section 25F thereof while terminating the casual service of Nil Kanta Manna on 20-3-1982. Nil Kanta Manna's subsequent appointments as Water boy were also made to meet the emergency and necessity and when his

service was found to be no longer necessary his such casual temporary service was terminated. Nil Kanta Manna by his appointment as Water boy did not attain the status in service as the subordinate staff and accordingly he was not entitled to get the wages as in the scale of the subordinate staff. Nil Kanta Manna first of all agreed to service as a Water boy at the daily wage of Rs. 5.40 for the days he was required to work without getting any wages for the holidays and sunday. On subsequent appointments as Water boy his daily wage was fixed at Rs. 7.30 and Rs. 7.03 respectively and Nil Kanta Manna agreed to such daily wages. Such being the position, Nil Kanta Manna's claim for higher wages for the period of his service is not sustainable and he is not entitled to get any relief in this respect. Nil Kanta Manna is also not entitled to get any reinstatement to his service as he was appointed as a purely temporary casual Water boy on a daily wage basis. According to the employer Bank Nil Kanta Manna is not entitled to any relief.

7. Both parties have adduced evidence, oral and documentary. There is no dispute to the fact that Nil Kanta Manna was appointed by the Manager of the Ghatsila Branch of the United Bank of India as Water boy on 15-10-1980 under the Bank's letter of the same date Ext. W-1 (corresponding to Ext. M-3). In the said appointment letter it has been clearly stated that the Bank likes to engage him as water boy in the Ghatsila Branch office as a temporary labour with daily wage of Rs. 5.40 and that Nil Kanta Manna's working hours would be 9.45 A.M. to 5.15 P.M. on working days Monday to Friday and from 9.45 A.M. to 2.15 P.M. on Saturdays. So it is clear from the appointment letter that Nil Kanta Manna was appointed as a temporary labour in the capacity of a water boy with daily wage. The nature of the employment of Nil Kanta Manna under the said letter establishes that he was the workman as defined in section 2(s) of the Act. Workman as defined in the said section may be regular employee, or even a part time employee or a temporary casual employee. So the management's contention in the written statement that Nil Kanta Manna was not a workman does not stand and the challenge to the validity of the reference on this ground is also not sustainable.

8. Mr. Mazumder, the Learned Advocate for the employer Bank has however challenged the maintainability of the reference on another ground which is however not mentioned in the written statement cum rejoinder of the employer Bank. According to Mr. Mazumder this reference is not maintainable as even after the termination of the service of Nil Kanta Manna on 20-3-1982, he was again re-employed on 13-5-1982. There is no dispute to the fact that the employer Bank under their letter dated 13-5-1982 Ext. W-3 (corresponding to Ext. M-5) re-employed Nil Kanta Manna as water boy at the daily wage of Rs. 7.30 and that his such service was also again terminated by the Bank's letter dated 9-8-1982 Ext. W-4. According to Mr. Mazumder as Nil Kanta Manna was appointed on 13-5-1982, the present reference made by the appropriate government for adjudication of the dispute whether the employer Bank was justified in terminating the service of Nil

Kanta Manna with effect from 20-3-1982 is not maintainable. Mr. Mazumder's argument in this respect could not be appreciated. The appropriate government has made the reference with regard to the propriety of the termination of Nil Kanta Manna's service with effect from 20-3-1982. The subsequent appointment of Nil Kanta Manna on 13-5-1982 will not legally debar this Tribunal from adjudicating that particular issue. Accordingly I do not find any substance in such submission of Mr. Mazumder and I find that the reference as made by the appropriate government is quite maintainable and that this Tribunal has jurisdiction to adjudicate the dispute involved.

9. WW-1 is Nil Kanta Manna, the concerned workman. He has stated in his evidence that he was appointed as a water boy under the Bank's letter dated 15-10-1980 Ext. W-1 and that his duty hours from Monday to Friday were from 9.45 A.M. to 5.15 P.M. and on Saturdays from 9.45 A.M. to 2.15 P.M. The appointment letter Ex. W-1 supports the same. Nil Kanta Manna has further stated in his evidence that he continuously worked from 15-10-80 to 20-3-1982 when his employment was terminated by the Bank's letter dated 20-3-1982 Ext. W-2. It has been alleged in the union's written statement that the concerned workman worked for 521 days in all during the period from 15-10-1980 to 20-3-1982. Nil Kanta Manna in his concluding portion of evidence has stated before the Tribunal that during his service upto 20-3-1982 he worked for more than 240 days in every calendar year.

10. WW-2 Debabrata Das who was a Typist-cum-Clerk at Ghasila Branch from 7-2-1976 to 30-6-1982 has also stated in his evidence that Nil Kanta Manna worked continuously from 1980 to 1982 as a Peon there, except on Sundays and holidays. The aforesaid evidence of Nil Kanta Manna and Debabrata Das has not been controverted and denied by any evidence on the side of the employer Bank. MW-1 Mihir Kumar Ghosh who was the Accountant in Ghatsila Branch from March, 1981 to August, 1985 is the only witness on the side of the employer Bank. He has admitted in his cross-examination that in between 15-10-1980 to 20-3-1982, the date on which the service of Nil Kanta Manna was terminated, no other appointment letter nor any termination letter was issued to Nil Kanta Manna by the Ghatsila Branch. It therefore appears from such evidence that Nil Kanta Manna continuously worked from 15-10-1980 to 20-3-1982 after his appointment as temporary water boy on 15-10-1980. Nil Kanta Manna accordingly worked for more than 240 days in a calendar year during his such continuous service. Such being the position, Nil Kanta Manna attained the status of continuous service as defined in section 258 of the Act and attracted the benefit of the provisions of section 25F of the Act in the matter of retrenchment of his such service.

11. There is no gainsaying to the fact that the employer Bank did not comply with the provisions of section 25F of the Act while terminating the service of the concerned workman Nil Kanta Manna. It may be mentioned here "retrenchment" as defined in section 2(oo) of the Act means the termination

by the employer of the service of workman for any reason what-so-ever otherwise than a punishment inflicted by way of disciplinary action but does not include voluntary retirement, superannuation etc. as mentioned in the said section. In view of what has been discussed above, I find that the employer has not been justified in terminating the service of the concerned workman with effect from 20-3-1982. The concerned workman is legally entitled to be treated as in service as a water boy and accordingly he requires to be reinstated to his such service.

12. Mr. Mazumder, the learned Advocate for the employer Bank has submitted that Nil Kanta Manna was appointed as a temporary water boy and he was not treated as subordinate staff. He has further submitted that the vacancy in the subordinate staff is required to be filled up according to the rules and procedures by getting the names of the candidates from the Employment Exchange. According to him, as Sri Manna was not appointed in accordance with the said procedure, he can not be re-instated to the service. Page 73 of the First Supplement to the Guidelines for Staff Administration Ext. W-8 clearly shows that the supply of drinking water is also the duty of the subordinate staff. It is true that Nil Kanta Manna (WW-1) has not stated in his evidence that he used to do the Peon's work including the service of drinking water. WW-2 Debabrata Das has however stated in his evidence that Nil Kanta Manna used to do the work of the Peon. The Peon undoubtedly is a subordinate staff. So that as it may, the supply of drinking water being the duty of the subordinate staff has no doubt brought the concerned workman under the category of the subordinate staff as he was appointed as a water boy under the first appointment letter Ext. W-1.

13. Under the first issue of the reference, this Tribunal is required to adjudicate whether the termination of service of the concerned workman with effect from 20-3-1982 by the employer Bank was justified and if not to what relief the concerned workman is entitled to. I have already found that the employer Bank was not justified in terminating the service of the concerned workman with effect from 20-3-1982 as the employer Bank did not comply with the mandatory provisions of section 25F of the Act. In the circumstances the concerned workmen is entitled to the reinstatement to the continuing service as was before the termination of his service on 20-3-1982. This Tribunal is not required to give any adjudication whether the concerned workman is entitled to get the permanent status in his service because of the reinstatement to the continuing service as was before the termination of service on 20-3-1982. The concerned workman is no doubt entitled to the relief by way of his daily wages.

14. Before I make adjudication on the quantum of relief from 20-3-1982 I shall have to adjudicate the second dispute involved in the reference. The second dispute involved in the reference is whether the management was justified in making the payment of Rs. 5.40 per day to the concerned workman during the period of his service under them. There is no dispute to the fact and it has been proved

by the first appointment letter Ext. W-1 that the concerned workman was appointed as a temporary water boy at the daily wage of Rs. 5.40 with effect from 15-10-1980. Mr. Mazumder has submitted after drawing my attention to the endorsement Ext. M-3(a) on the first appointment letter Ext. M-3 (corresponding to Ext. M-1) that Nil Kanta Manna agreed to the terms and conditions mentioned in the said appointment letter. Mr. Bose appearing for the union on the other hand has submitted that inspite of such agreement the employer Bank was bound to give the equal pay for equal work to the concerned workman. He has also drawn my attention to the decision in the case of Dhirendra Chamoli and another v. State of U.P., reported in 1986(I) LJ 134. In the case as referred to above, it appears from the fact that a number of persons were appointed as casual workers on daily wage basis by Nehru Yuva Kendra Dehradun and that such casual workers used to perform the same work as Class-IV employees of the same Kendra appointed on regular basis. These casual workers accepted the appointment on the understanding that they would not be paid the salary and allowances paid to regular Class-IV workers. Two employees of the Kendra wrote a letter to the Supreme Court demanding equal pay for equal work. The said letter was treated as Writ Petition. The Supreme Court directed the Central Government to accord to these casual employees who were performing the same duties as regular Class-IV employees, the same salary and same conditions of service as were being received by Class-IV employees appointed on regular basis. Mr. Mazumder has however submitted that this Tribunal cannot apply the principle of equal pay for equal work as this Tribunal is not exercising any writ power under the Constitution and as the concerned workman was not performing the duties of the regular subordinate staff. I have given due consideration to the submissions as advanced by both sides in this respect. It is true that this Tribunal cannot exercise the writ power under the Constitution but in the instant case it appears that the appropriate government while making the reference has asked this Tribunal to adjudicate whether the management was justified in making the payment of Rs. 5.40 per day to the concerned workman during the period of his service under the Bank. So the reference itself has given jurisdiction to this Tribunal to adjudicate whether the management was justified in giving the daily wage to the concerned workman @ Rs. 5.40. This Tribunal has already arrived at the finding that the concerned workman as a Water boy was performing the same duties as a subordinate staff is required to do. So Mr. Mazumder's argument that the concerned workman was not doing the same nature of work as the subordinate staff was required to do in the Bank, does not stand to reason.

15. Mr. Bose for the Union has submitted that the Minimum Wages Act, 1948 also requires that minimum wages as prescribed by the appropriate government ought to have been given to the concerned workman during his service under the Bank. With due regard to the submission of Mr. Bose, I find that the provisions of the Minimum Wages Act have got no scope of their application in the instant case as the employment in which the concerned workman

was employed does not come under the Part-I and Part-II of the Schedule to the Minimum Wages Act. Be that as it may, the question now is that the principle of equal pay for equal work as enunciated by the Courts in India cannot be overlooked and that arbitrary payment of wages in disregard to the aforesaid principle requires to be remedied. The employer Bank has not produced any evidence to show what would have been the reasonable daily wage during the period in question for a workman like a subordinate staff in the Bank. The union has also not given any direct evidence in this respect. But the union has produced the salary chart of the subordinate staff Ext. W-6 showing the total minimum salary including the pay, dearness allowance and other fringe benefits during the year 1980 to 1982. It is true that the said salary chart refers to the regular subordinate staff who gets their monthly wages in accordance with their scale of pay. In the absence of any evidence with regard to the daily wage rate, it may not be wrong if the rate of daily wage is determined on the basis of the total wages of the subordinate staff in a month as indicated in the salary chart Ex. W-6. It appears from the aforesaid salary chart that in December, 1980 the subordinate staff's total wage was Rs. 494.90. In December, 1981 the total wage for such subordinate staff was Rs. 563.50. The average monthly wage on such two months stands to Rs. 529/- . Having calculated on the said average monthly wages, the daily wage stand to Rs. 17/- approximately. In such circumstances the ends of justice demand that the concerned workman ought to have been paid the minimum daily wage @ Rs. 17/- (Seventeen) per day. The employer Bank however gave the daily wage @ Rs. 5.40 during the period of workman's service from 15-10-1980 to 20-3-82. This rate of daily wage appears to be arbitrary and much below the daily wage which a subordinate staff could earn at the relevant time.

16. In view of what has been stated above, the concerned workman is entitled to get the daily wage @ Rs. 17/- (Seventeen) during the period from 15-10-1980 to 20-3-1982 and on his reinstatement to the service he is entitled to get the said daily wage till he is given the scale of pay on regularisation or his service is terminated in accordance with the provisions of the Act. The daily wage @ Rs. 5.40 received by the concerned workman during the period from 15-10-1980 to 20-3-1982 and the daily wages @ Rs. 7.30 and Rs. 7.03 which he received during his subsequent employment on two other occasions from 13-5-1982 to 9-8-1982 and 11-8-1982 to 23-9-1982 respectively shall be deducted from the total amount of his wages as assessed @ Rs. 17/- (Seventeen) per day. Both the issues involved in the reference are disposed of accordingly.

This is my Award.

Dated, Calcutta,

The 23rd November, 1989.

Sd/-

SUKUMAR CHAKRAVARTY, Presiding Officer
[No. L-12012/58/85-D.II(A)]

का. अ. 171—शोधांगिक विवाद प्रधिनियम 1947 (1947 का 14) को शारा 17 के अनुसरण में केवल सरकार सिडिकट बैंक के प्रबंधनतंत्र के लंबाई नियोजित और उनके कर्मकारों के बीच अनुबंध में निश्चिह्न शोधांगिक विवाद में केवल सरकार शोधांगिक अधिकारण नई दिल्ली के प्रदाता की प्रतीक्षा करता है जो केवल सरकार को पाप्त हुआ था।

S.O. 171.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, New Delhi as shown in the Annexure in the Industrial dispute between the employers in relation to the Syndicate Bank and their workmen, which was received by the Central Government.

ANNEXURE

BEFORE SHRI G. S. KALRA : PRESIDING OFFICER : CENTRAL GOVT. INDUSTRIAL TRIBUNAL, NEW DELHI

I. D. No. 129/88

In the matter of dispute between :

Shri Kanahiya Manjhi, C/o Delhi General Workers Union A 97, Karampura, New Delhi-15.

Versus

M/s. Syndicate Bank, Delhi Zonal Office, Sarojini House 6, Bhagwan Dass Road, New Delhi.

APPEARANCES :

Shri Uma Charan Sharma with the workman.
None—for the Management.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012/243/88-D2(A) dated 4-11-88 has referred the following industrial dispute to this Tribunal for adjudication :—

"Whether the action of the management of Syndicate Bank in terminating the services of Shri Kanahiya Manjhi and not considering him for further employment while recruiting fresh hands under section 25-H of the I.D. Act is justified? If not, to what relief is the workman entitled?"

The workmen filed statement of claim dated 7-2-89 according to which he joined service of the Management as an attendant w.e.f. 16-4-86 and worked till 25-10-86 when his services were terminated without notice, charge sheet or enquiry. It has been alleged by the workman that his name was duly sponsored by the Employment Exchange and he was selected after interview against permanent post and quota for scheduled castes. The post against which he was employed still continued and was not abolished and a new entrant was engaged in his place who was junior to him. The workman lost the lien on appointment due to cancellation of his registration

with the employment exchange by the Management and thus suffered an irreparable loss. Hence his termination was wrongful, illegal, unjust and discriminatory besides victimisation and harassment which amounted to unfair labour practice. He has prayed that he may be reinstated with continuity of service and with full back wages.

3. The Management in its written statement dated 15-5-89 controverted the claim and allegations of the workman and submitted that the employment of the workman was temporary and against his specific leave vacancy in a particular branch. It denied having violated the provisions of section 25-F, G and H of the I.D. Act.

4. The Management was given 4 opportunities to produce its evidence but it failed to produce any evidence. Today even none appeared on behalf of the Management and it was proceeded against ex parte. The evidence of the workman has been recorded and he produced documents Ex. W1 to W11 in support of his case which have gone unrebutted. Under the circumstances the case of the workman stands proved and the action of the Management in terminating his services and not considering him for further employment is held to be illegal and invalid and it is directed that he should be reinstated with continuity of service and with full back wages.

15th November, 1989.

G. S. KALRA, Presiding Officer
[No. L-12012/243/88-D.II(A)]
V. K. VENUGOPALAN, Desk Officer

का. आ 172.—कंट्रीय मरकार का ८८ नमस्त्रयम् जो जाने पर कि लोकहित में ऐसा करना अवैधित है, श्रीयोगिक विवाद अधिनियम १९४७ (१९४७ का ११) का धारा २ के खण्ड (ग) को उत्थारा (VI) के प्रत्युषयम् में भावन मरकार के अम मंत्रालय का जारी १५ जूलाई १९८५ की अधिगृहन संघर्ष १९८८ के लड़ाने के दूसरी तृष्ण योजना के अधीन दृष्ट आपूर्ति उत्तोग को उत्त अधिनियम के प्रयोजनार्थ २९ जूलाई १९८९ से छह माह का कालावधि के लिए सोकार्पोरी मेवा दीयित किया था।

श्री कंट्रीय मरकार का यह शब्द कि लोकहित में उत्त अवैधित को श्रीर छह माह के लिए बढ़ाना अपेक्षित है,

अतः अब श्रीयोगिक विवाद अधिनियम १९४७ (१९४७ का ११) का धारा २ के खण्ड (ग) को उत्थारा (VI) द्वारा प्रदत्त अफियों का पर्याप्त करने द्वारा कंट्रीय मरकार उत्त उत्तोग को उत्त अधिनियम के प्रयोजनार्थ २९ जूलाई १९९० में छह माह का कालावधि के लिए सोकार्पोरी मेवा दीयित करना है।

[सं. नम. 11017/14/81-ई-1(ग)]

S.O. 172.—Whereas the Central Government having been satisfied that the public interest so required had in pursuance of the provision of sub-clause (vi) of Clause (n) of section 2 of the Industrial Disputes

Act, 1947 (14 of 1947), declared by the notification of the Government of India in the Ministry of Labour S.O. 1978 dated the 18th July, 1989 the industry for the supply of milk under the Delhi Milk Scheme to be a public utility service for the purposes of the said Act, for a period of six months from the 29th July, 1989;

And, whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months;

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby declares the said industry to be a public utility service for the purpose of the said Act for a further period of six months from the 29th January, 1990.

[No. S-11017/14/81-D.I(A)]
NANDI LAL, Under Secy.

का. आ 173.—श्रीयोगिक विवाद अधिनियम १९४७ (१९४७ का १४) की धारा १२ के अनुसरण में कंट्रीय मरकार भारतीय उत्पाद वित्त नियम के प्रवर्धनक के स्वदृ नियोजकों और उनके कर्मकारों के बीच अनुषंघ में निर्विष्ट श्रीयोगिक विवाद में कंट्रीय मरकार श्रीयोगिक अधिकारण नई दिल्ली के चाराट को प्रकाशित करती है।

नन्द लाल, अवर अधिकारी

S.O. 173.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Govt. Industrial Tribunal, New Delhi as shown in the annexure, in the industrial dispute between the employers in relation to the management of Industrial Finance Corporation of India and their workmen.

ANNEXURE

BEFORE SHRI G. S. KALRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NEW DELHI

I.D. No. 71/88

In the matter of dispute between .

Shri M. L. Jain and others, through the General Secretary, Industrial Finance Corporation Employees' Association, 12th Floor, Bank of Baroda Building, 16, Sansad Marg, New Delhi.

VERSUS

The Manager, Industrial Finance Corporation of India, 12th Floor, Bank of Baroda Building, 16, Sansad Marg, New Delhi.

APPEARANCES :

Shri Sandeep Parbhakar—for the Management.
None—for the workmen.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-12012(70)S7-D.II(A)|D.IV

(A) dated 11-7-88 has referred the following industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Industrial Finance Corporation, New Delhi, in superseding S|Shri M. L. Jain, Laxmi Chand and S. K. Bose and not giving them promotion as Assistant is justified? If not, to what relief the workmen are entitled?"

2. The Union of the workmen which has raised this dispute has not filed any statement of claim in spite of the express direction given in the order of reference itself and also the registered notices sent by this Tribunal. However, today the Management has submitted three separate written settlement executed by the concerned workmen with the Management which have been marked as Ex. C1, C2 and C3. All the three settlements are similar in their contents and it has been stated therein that subsequent to the initiation of the conciliation proceedings the Management issued order of promotion of the workmen and since the workmen have been promoted there was no grievance in this regard and as such no dispute survived between the parties, and that the dispute has been resolved to the entire satisfaction of the workman and they are no longer interested in pursuing the dispute.

3. In view of the settlement arrived at between the parties "No dispute" award is hereby given and this reference stands disposed of accordingly.

19th December, 1988.

G. S. KALRA, Presiding Officer
[No. L-12012/70/87-D.II(A)/LR(B)I]

कां पा. 171 :- श्रीयोगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसार मे केंद्रीय गरकार वर्तमान क्षेत्रीय ग्रामीण बैंक वरेंज के प्रत्येक ने मंवड नियोजकों और उनके कमियों के खिलाफ अनुबंध में विविध शीर्षक विवाद में केंद्रीय गरकार श्रीयोगिक अधिकरण कानपुर के घासाट को प्रकाशित करती है।

S.O. 174.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, Kanpur as shown in the annexure, in the industrial dispute between the employers in relation to the management of Bareilly Kshetriya Gramin Bank, Bareilly and their workmen.

ANNEXURE

BEFORE SHRI ARJAN DEV MAHAJAN, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, KANPUR—U.P.

Industrial Dispute No. 142 of 1987

In the matter of dispute

BETWEEN

Shri Munna Lal, S/o Shri Jwala Prasad, R/o 613, Subhas Nagar, Bareilly.

AND

The Chairman,

Bareilly Kshetriya Gramin Bank Limited,
Head Office Bareilly.

AWARD

1. The Central Government, Ministry of Labour, vide its notification No. L dated has referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of Bareilly Kshetriya Gramin Bank Limited Bareilly in terminating the services of Shri Munna Lal, Driver cum Messenger w.e.f. 9-4-1985 is justified? If not, to what relief is the workman concerned entitled?

2. It is the admitted case of the parties that the workman Shri Munna Lal, was appointed as Driver-cum-messenger on probation of one year by the Chairman Bareilly Kshetriya Gramin Bank (hereinafter referred to as bank for the sake of convenience) by means of his letter dated 16-4-1984, copy Ext. M-1. On the basis of the said letter of appointment, the workman joined service on 17-4-1984. Before workman could complete his probationary period, his services were terminated by the Chairman, of the Bank w.e.f. 9-4-1985, by means of his letter dated 9-4-1985, copy Ext. M-3. With the letter of termination a pay order for Rs. 789.85 paise was also enclosed. This amount consisted of one months notice pay amounting to Rs. 607.50 paise and 9 days salary of the month of April, 85 amounting to Rs. 182.25 paise.

3. The workman's case is that the management of the bank terminated his services before the expiry of the period of probation mala fide in order to accommodate their own man. Before the termination of his services no show cause notice was issued to him nor any disciplinary proceedings were taken against him.

4. The workman has further alleged that on 13-12-1984, an incident took place at about 8 A.M. on Bebugul Bridge due to negligent driving of the driver of a tanker for which a F.I.R. was lodged at the police station Niranjpur Katra. The case was withdrawn by the Bank Authorities in order to save themselves from their own responsibility and further to save themselves from interrogation by the police. Had the case been contested, the real culprits would have been brought to book and the losses could have been recovered from the insurance company. In the said accident he received serious injuries and remained hospitalised from 13-12-1984 to 20-1-85. According to him during the period of his service he performed his duties satisfactorily. On the above facts he has prayed that the order of termination of his service be set aside and necessary relief be granted to him.

5. The management pleads that the work of the workman as Driver cum Messenger was not satisfactory. During the probationary period he was not maintaining the vehicle No. USW-3559, driving of which was instructed to him properly. As a result of it the maintenance expenditure of the vehicle went on higher side and the bank's inspecting authority vide their inspection note dated 24-9-1984 took a serious view of it. On 13-12-1984 the accident referred to by him in his claim statement took place due to sheer re."

driving of the vehicle by the workman. In the said accident the Chairman Shri R. K. Mishra, Shri A. C. Tripathi and Shri D. R. Srivastava, Officers' of the Bank, S|Shri A. K. Goel, S. C. Thapliyal and Shri R. S. Mehra officers of the Bank of Baroda sustained serious injuries. The bank thus suffered a total loss of Rs. 41345.60 inclusive of medical reimbursement and payment of salaries to the concerned officers besides the loss of vehicle which had to be auctioned ultimately. It was under the circumstances that it was not deemed proper to keep the workman in employment. It is the employer who is the sole judge regarding the suitability of a workman. The employers' judgment in this regard is not subject to review by the Industrial Tribunal. Accordingly he is not entitled to any relief. If for any reason the tribunal comes to the conclusion that the order terminating the services of the workman was not justified it would not be proper to grant him the relief of re-instatement. There is no illegality in the order of the termination of the services of workman.

6. In this cases, the workman has filed rejoinder, but in it no new fact has been alleged by him.

7. In support of its case the management filed the affidavits of S|Shri A. C. Tripathi, Manager (P), R. K. Mishra, Chairman, and Deepak R. Srivastava, Manager (Accoun's) and a number of documents. The management, however, put in the witness box the first two officers only. On the other hand, the workman in support of his case filed his own affidavit.

8. We have seen that the admitted case of the parties is that on the basis of letter of appointment dated 16-4-1984, the workman joined as Driver cum Messenger on 17-4-1984, but his services were terminated w.e.f. 9-4-1985 i.e. before his period of probation of one year could end. It follows therefore, that by 8-4-1985 he had worked for more than 240 days of work during the period of 12 months preceding the date of his termination of his services. Therefore, under section 25F I.D. Act, he was to be given one month's notice or one month's pay in lieu of notice besides retrenchment compensation. The same thing was held by the Hon'ble Supreme Court in the case of Karna'aka State Road Transport Corp. V. A. Horaish, 1984 (48) FLR 89. It was a case where the services of a few probationers were terminated without compliance of the provisions of section 25F I.D. Act.

9. In the instant case the letter by means of which the services of the workman were terminated by the Chairman is dated 8-4-1985, copy of it has been filed by the management and it is marked as Ext. M-III. The letter shows that he was paid pay and allowances amounting to Rs. 607.60 paise in lieu of one month's notice besides pay and allowances amounting to Rs. 182.25 paise towards salary for 9 days of the month of April, 1985. There is nothing in the letter to show that the retrenchment compensation was paid to the workman. But for non payment of retrenchment compensation as provided by a section 25F of the Act, the order of termination is void as it simply terminates the services of the workman without casting a stigma on him. There-

fore, the order of termination cannot be upheld and it is void.

10. The consistent view of the law is that where the order of termination, dismissal or discharge is found void on account of non compliance of section 25F the tribunal should ordinarily reinstate the workman but the facts of the present case are such as warrant that reinstatement should not be ordered. Section 11-A of the I.D. Act, gives ample powers to the tribunal to give such other relief to the workman in suitable cases. It lays down that where the Tribunal etc., is satisfied that order of discharge or dismissal was not justified, it may, by its award set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions if any, as it thinks fit or give such other relief to the workman including the Award of any loss or punishment in lieu of discharge or dismissal as the circumstances of the case may require. The case set up by the management is that where the work of the workman was not satisfactory. In this regard I would like to refer to the statements made by the two management witnesses in that cross examination. In para 3 of his statement in cross examination Shri R. K. Mishra Chairman of the bank has referred to the report dt. 2-4-85, copy ext. M-7 sent to him by Shri A. C. Tripathi, Manager Personnel. In the report it is stated that the work of Shri Munna Lal was unsatisfactory and prejudicial to the Bank's interest. It is stated in the report that due to improper maintenance of the vehicle the maintenance cost had gone on the higher side. According to Shri Mishra, the manager personnel had also sent him a report dated 15-6-1984 about the unsatisfactory work of the workman at the time of his cross examination the witness deposed that he had with him the original report dated 15-6-1984. Upon that he gave the workman a verbal warning on 20-6-84 without calling a written explanation from him. Shri Mishra has then referred to the incident which took place on 13-12-84. According to Sri Tripathi at the time of the accident he was sitting on the front cast of Trekker which was being driven by the workman. There was a head on collision with a truck which took place due to sheer negligence of the workman. At that time the workman was found taking nap. Shri Mishra said that it was not a new thing for the workman. The workman had the habit of taking naps while driving the vehicle. He had noticed this fact two or 3 times.

11. Shri Mishra has then deposed that there was no mechanical defect in the vehicle. The Vehicle was damaged and the insurance company gave the bank Rs. 65000/- He, A C Tripathi, Shri D K Srivastava and workman sustained injuries and remained in hospital for sometime. Ext. M-V and M-VI, are copies of statements of payment of salary and medical expenses to Shri R. K. Mishra, A C Tripathi, D R Srivastava and the workman. It appears that they were paid Rs. 4465.95p. 4083.70p., 8077.30 and 1856.25p, respectively towards medical expense besides salary.

12. Shri Mishra has further deposed that in respect of the incident F.I.R. was lodged at the police

station but the police didn't prosecute the workman. From this, the authorised representative for the workman wants to draw the inference that had there been any fault or negligence on the part of the workman, the police would have given a charge-sheet against the workman. On the face of it the argument seems to have force but human psychology is that when such a thing happens the officer on the lamentations of their employee try to save and protects him knowing very well that he is at fault. The officers examined are top executives and their statements cannot be disregarded in respect of the above facts deposed to by them. There is nothing to show that they bear any enmity or ill will against the workman concerned. Shri R K Mishra in his cross examination has even said that once it was reported to him by an officer of the bank to whom the workman had taken in vehicle to the village side that the workman was heavily drunk. Even after hearing it he simply issued a verbal warning to the workman.

13. Thus I find that the management has lost its confidence in the workman and he is unsuitable for the job. As has been argued from the side of the management the officers reasonably apprehend that their lives are not safe in the vehicle driven by the workman. He could land them in trouble. I therefore, think it just and proper to award him compensation instead of reinstatement. Looking to his salary a compensation of Rs. 14000/- will meet the ends of justice.

14. He is a driver and as a driver he can find job elsewhere. By terminating his services the management did not attach any stigma to him. It is not that after the termination of his services the workman would have not idle.

15. Hence, I find that the action of the management of Bareilly Kashetriya Gramin Bank Bareilly in terminating the services of Shri Driver cum-Messenger w.e.f. 9-4-85 was not justified. As said above he is awarded a sum of Rs. 14000/- as compensation instead of reinstatement.

16. Reference is answered accordingly.

ARJUN DEV, Presiding Officer
[No. L-12012/127/87-D.II(A)|D.IV(A)|IR(B)I]

का. आ. 175:- श्रीधोगिक विवाद अधिनियम, 1947 (1947 का 14) की वारा 17 के प्रत्यय में केन्द्रीय सरकार द्वारा हिन्दू पारम्परिक लिपियों के प्रबंधसंकलन के संबंध नियोजकों और उनके फरमानों के बीच अनुबंध में लिखित श्रीधोगिक विवाद में केन्द्रीय सरकार श्रीधोगिक अधिवारण, अण्डीगढ़ के वंचवट को प्रकाशित करती है।

S.O. 175.—In pursuance of section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Govt. hereby publishes the award of the Central Government Industrial Tribunal, Chandigarh as shown in the annexure, in the industrial dispute between the employers in relation to the management of New India Assurance Co. Ltd. and their workman.

ANNEXURE

BEFORE SHRI M. S. NAGRA, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH.

Case No. I.D. 34/86.

PARTIES :

Employers in relation to the management of New India Assurance Co. Ltd.

AND

Their workman—Madan Lal.

APPEARANCES :

For the workman—Shri Dinesh Ghai Advocate.

For the management—Shri S. K. Chhabra, Advocate.

INDUSTRY : Insurance Co.

STATE—H.P.

AWARD

Dated

On a dispute raised by Madan Lal against New India Assurance Co. Ltd. Central Govt. had vide No. L-17012/24/85-D.IV (A) dated 21st April 1986 referred the following dispute to this Tribunal for decision.

“Whether the action of the management of the New India Assurance Co. Ltd. Mandi (H.P.) in terminating the services of Shri Madan Lal, Clerk-cum-Typist at their branch at Mandi (HP) on 10-6-1983 is justified and in order? If not, to what relief is the workman concerned entitled and from what date.”

2. Case of the petitioner as set out in the statement of claim is that he was employed by the management of New India Assurance Co. Ltd. on 22-9-1981 and his services were illegally terminated on 10-6-1983. That he was in the continuous service of the management without any break. It is mentioned that the petitioner who was designated as daily wage worker was actually performing the work of permanent nature and his services were terminated without holding any inquiry and serving him any show cause notice. He contends further that there is violation of conditions precedent to retrenchment as envisaged under Section 25-F of the Industrial Disputes Act 1947.

In its answer filed the management took plea that employment of the petitioner was purely as temporary basis and the management was within its right to terminate the services of the petitioner because it was by way of stop gap arrangement. It is also pleaded that workman is estopped from filing the present matter as he had accepted one month salary in lieu of notice period before Presiding Officer Shimla Labour Court where the matter was initially agitated.

3. The parties were allowed opportunity to lead evidence. Shri Hemendra Singh Pawar Manager Pathankot Branch of New India Assurance Co. Ltd. filed affidavit Ex. M1 reiterating the stand taken by the management. In rebuttal the workman Madan Lal filed his affidavit Ex. W1 in support of his evi-

dence. During his cross-examination he admitted that he was drawing salary @ Rs. 18/- P. day with the respondent and after about eight or 10 days of leaving employment of the respondent he had joined service of M/s. Tara Chand Malhotra & Sons at daily rate of Rs. 22 per day and he worked with the said Firm for 10 months. He further admitted that at present he is employed as Accounts Clerk with Himachal Pradesh Tourism Development Corporation since 18-4-1984 drawing salary of Rs. 700—800 per month.

4. Learned counsel for the management contend that the workman had abandoned his employment for better prospects and he is not entitled to any relief. Admittedly the management had never taken any such stand earlier to the present proceedings either before the Labour Court at Shimla before whom the matter was initially filed or during the conciliation proceedings. The Management had taken a clear stand that management was within its right to terminate the services of the workman because it was by way of stop gap arrangement. Right of the management to terminate the services can not be disputed but it had to comply with the provisions of Section 25-F of the Industrial Disputes Act 1947. It is none of the case of the management if they had served the petitioner with one month notice or salary in lieu thereof. The management had also not paid retrenchment compensation to the petitioner to which he was entitled. Subsequent payment of one month salary in lieu of notice before Labour Court at Shimla

does not transmute the void order into a legal one. Action of the management in terminating the services of Madan Lal clerk-cum-typist was in no way in order. The question arises as to what relief is to be granted to the petitioner. It is an established law if termination of service is not justified the workman is entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. In the case in hand the petitioner was getting wages @ Rs. 18/- per day. He admittedly got employment @ Rs. 22/- per day after 8/10 days of termination of his services. After rendering 10 months service with a private firm he is in continuous employment of Himachal Pradesh Tourism Development Corporation till to day at a salary of Rs. 700/800 per month. He is thus not entitled to any back wages and is only entitled to re-instatement.

Reference is therefore, returned with the finding that order of termination of services of workman Madan Lal was not in order and he is entitled to re-instatement forthwith with all service benefits excepting back wages from 10-6-1983 to the date of re-instatement.

Chandigarh.

26-7-1989.

M. S. NAGRA, Presiding Officer.
[No. L-17012/24/85-D.IV(A)/IR(B)-1]
PADMA VENKATACHALAM, Dy. Secy.